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THE
ISMAILI LAW OF WILLS

BY

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PREFACE

The systematic and historical study of Islamic Jurisprudence is still in its infancy. For this a thorough knowledge of the texts of recognized authority is indispensable. It is well known that very few such texts have been critically edited or translated, thus putting special difficulties in the way of the student of *fiqh*. And the difficulty of research in Shī'ite law is greater: for, although printed editions and translations of some of the principal Sunnite texts are available, Shī'ite books are far more difficult to obtain and their law is therefore much less known. Many of their texts are still in manuscript; such as are printed (for instance, Persian lithographs), are not easily obtained. And coming to Ismā'īlīs, the difficulties seem at first to be insuperable; for Ismā'īlī Law, as Ismailism generally, is almost a sealed book to western scholars.

The *Da'ā'imu'l-Islām* is an ancient and authoritative Ismā'īlī text, important from several aspects; religious, ethical, social, legal. And the study of law cannot in these days be dissevered from that of religion, ethics, history, and sociology; for 'Law streams from the soul of a people like national poetry, it is as holy as the national religion, it grows and spreads like language; religious, ethical, and poetical elements all contribute to its vital force'.[1] I had therefore undertaken some years ago, to edit and translate that portion of the *Da'ā'im* which deals with civil law and is to this day applicable to the Western Ismā'īlīs in India. It has not been possible to proceed with the original plan with any degree of regularity for several reasons. In the first place, no co-operation can, with rare exceptions, be expected from the sectarians themselves, for they hide the Da'wat literature with an extraordinary zeal. In the next, reliable manuscripts are very difficult to obtain. In

[1] C. K. Allen, *Law in the Making*, 54.

the humid climate of Bombay and Gujarat, the stronghold of the Western Ismā'īlīs in India, it is rarely that one comes across a manuscript over three centuries old. Thus the reconstruction of the text is not an easy task, and at the end of one's labours the uneasy thought remains that it is impossible to say how far the text so edited differs from the one written originally by the author. And lastly, the work has been done intermittently, and the lack of leisure while following the exacting profession of the law has been keenly felt. In spite of every endeavour many defects must necessarily remain in work of this character, and the indulgence of the critical reader is therefore craved.

Instead of waiting for the whole of the work to be ready, which may take several years still, it has been thought fit to publish a small part of the whole, viz. the text with translation, notes and an introduction, of the *Kitābu'l-Waṣāyā* from the second volume of the *Da'ā'im*. The *Kitābu'l-Waṣāyā* (Book of Wills) consists of two parts; one religious, the other legal. In the first part, the testament of 'Alī I (§ 9) is of great interest from the purely religious and doctrinal point of view. It is also to be found in the third volume of the *'Uyūnu'l-Akhbār* of Saiyidnā 'Imādu'd-dīn Idrīs b. Ḥasan, and is frequently referred to in the Da'wat books. The second part deals almost exclusively with legal questions. The biography of Qāḍī an-Nu'mān, written originally for being incorporated in the introduction, is now curtailed as it is about to appear in full in the pages of the *Journal of the Royal Asiatic Society*, London.

The publication of books and papers on oriental subjects is always a matter of difficulty, and my gratitude is due to the University of Bombay for contributing substantially towards the cost of the publication of this monograph. I should also like to acknowledge gratefully the assistance rendered to me in different ways by several Ismā'īlī scholars, most of whom, preferring to remain anonymous, have deprived me of the pleasure of mentioning them by name. But above all my

sincerest thanks are due to my friend, Mr. W. Ivanow, late Assistant Keeper, Asiatic Museum of the Russian Academy of Sciences, St. Petersburg, whose exceptional knowledge of matters Ismā'īlī was ever at my disposal. He not only read the manuscript and saved me from many a pitfall, but has laid me under a deep debt of gratitude by reading the proofs. My only regret is that as his masterly *Guide to Ismaili Literature* (R.A.S., London) is still in the press, I have been unable to give continuous references to it.

A. A. A. F

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ABBREVIATIONS

The *Qur'ān* is referred to as follows : **2**, 176 : the first bold figure indicating the Sūra, the second, the verse according to Flugel's edition.

The system of transliteration followed is that recommended by the Royal Asiatic Society, London, with a few variations.

The title, edition, volume, page, and line respectively, of a work referred to are indicated as follows : *Enc. Brit.*[14] iv. 713_{12}, that is, *Encyclopædia Britannica*, 14th edition, vol. iv, page 713, line 12.

Brock. : Brockelmann's *Geschichte der arabischen Litteratur*. 2 vols. Weimar, 1898–1902.

EI : Encyclopædia of Islam by M. Th. Houtsma and others. Eng. edition. London-Leiden, 1913.....(in course of publication).

I. Khall. : Ibn Khallikān, *Biographical Dictionary*, Eng. trans. by Baron McGuckin de Slane. 4 vols. London-Paris, 1843–1871.

JRAS, JBBRAS, etc. : *Journal of the Royal Asiatic Society*, and of the *Bombay Branch Royal Asiatic Society*, etc.

Lane : Lane's *Lexicon*. 8 parts. London, 1863–1893.

M-B. : Majma'u'l-Bahrain by Fakhru'd-dīn b. Muhammad b. Ahmad an-Najafī. Tehran, 1321.

Maj. : Majmū'u'l-Fiqh by Zaid b. 'Alī. Edited by Eugenio Griffini. Milan, 1919.

Mus. : Mustadraku'l-Wasā'il wa Mustanbatu'l-Masā'il by Mīrzā Ḥusain b. Muhammad at-Taqī an-Nūrī aṭ-Ṭabarsī. 3 vols. Tehran, vol. i, 1318/1900 ; vol. ii, 1319/1901 ; vol. iii, 1321/1903.

Was. : Wasā'ilu'sh-Shī'a by Muhammad b. Ḥasan al-Ḥurr al-'Āmilī. 3 vols. Tehran, 1323/1905.

اذا ظهرت البدع فى امتى فليظهر العالم علمه
و إلّا فعليه لعنة الله،

[حديث]

INTRODUCTION

I. THE BOOK AND ITS AUTHOR

The Book : Da'ā'imu'l-Islām

The principal source for the study of Ismā'īlī Law is the *Da'ā'imu'l-Islām* [1] of Qāḍī an-Nu'mān b. Muḥammad b. Ḥaiyūn,[2] died 363/974, and referred to as ' The Abū Ḥanīfa of the Shī'a '.[3] The book is divided into two volumes : the first deals with *'ibādāt* (religious duties), that is, *īmān* (in the special Ismā'īlī sense), *ṭahāra, ṣalāt, janā'iz, zakāt, ṣawm, ḥajj*, and *jihād ;* the second deals with *mu'āmalāt* (worldly affairs), and a glance at the contents [4] shows that it consists mainly of what we now call legal topics. The chapter on Wills edited and translated below forms part of this volume.

Qāḍī an-Nu'mān was a very illustrious author and judge, and his reputation rests on numerous legal, polemical, religious,

[1] The ' Pillars ' of Islam (*da'ā'im*, sing. *di'āma* from *da'ama*, to prop, support). According to a tradition handed down by Imām Ja'far aṣ-Ṣādiq, in volume i of the *Da'ā'im*, Islam is founded upon 7 pillars : (i) *Walāya* (Friendship, that is, the friendship of the Imām and the People of the House of Muḥammad (*ahlu'l-bait*) : cf. the *waṣīya* of 'Alī, § 9, pp. 70-71 below) ; (ii) *Ṭahāra* (Ritual Purity) ; (iii) *Salāt* (Congregational Prayer) ; (iv) *Zakāt* (Poor Tax) ; (v) *Ṣawm* (Fasting) ; (vi) *Ḥajj* (Pilgrimage to the Ka'ba), and (vii) *Jihād* (Holy War). The full title of the book is دعائم الاسلام فى ذكر الحلال و الحرام و القضايا و الاحكام.

[2] I. Khall. iii. 565. But some MSS. have Ḥaiyān erroneously, حَيّان or حيوان.

[3] *EI*, iv. 355. For further references see my note on ' Bequests tc Heirs : Ismā'īlī Law ' (1929) *JBBRAS*, vol. 5, 141. The authorship is not undisputed, some authorities like Brockelmann (i. 187-188) suggesting that al-Qummī was the real author of this work. Internal evidence, and the fact that in many instances Qāḍī an-Nu'mān differed widely from the Twelvers, show however that this is very unlikely.

[4] *Infra*, description of MS. *A*.

and historical works. Some of the legal works attributed to him, and which are used to this day, are *Mukhtaṣaru'l-Āthār* (2 vols.), *Kitābu'l-Yanbū'*, *Kitābu'l-Iqtiṣār*, and the *Muntakhaba*, which is a very brief statement of the law in metrical form. These four, together with a collection of scholia, the *Kitābu'l-Ḥawāshī*, attributed to Amīnjī bin Jalāl, written by various hands and collected at a time unknown to me, are used to supplement and interpret the rules laid down in the *Da'ā'im*, which remains the paramount authority.[1]

Till recently Ismailism was almost a sealed book, but of late it is attracting a great deal of attention among serious students of Islam. The meagreness of our knowledge can be judged from the bibliography prepared by Massignon some ten years ago, entitled 'Esquisse d'une Bibliographie Qarmaṭe'.[2] The recent work of Ivanow,[3]—and particularly his forthcoming *Guide to Ismaili Literature* (R.A.S., London)—Hamdani,[4] and Kraus,[5] to take but a few examples, however, gives us the hope that many new treasures of esoteric knowledge and many a chapter of unknown and curious history may be opened up. But no one has so far touched on the development of law and of legal history among the Ismā'īlīs. The study of law is important, in the first place, not merely for the purpose of

[1] In discussing the Ismā'īlī Law of *Mut'a* I have published extracts from the above works in (1932) *JBBRAS*, 85.

[2] *'Ajabnāma* (A volume of studies presented to Professor E. G. Browne), 329.

[3] *Ismailitica*, Calcutta, 1922; 'An Ismailitic work of Naṣīru'd-dīn Ṭūsī' (1931) *JRAS*, 527; 'An Ismā'īlī Interpretation of *Gulshan-i-Raz*' (1932) *JBBRAS*, 69, and other papers.

[4] (1932) *JRAS*, 126 on the 'The History of Ismā'īlī Da'wat and its Literature during the last phase of the Fatimid Empire'; 'The Life and Times of Queen Saiyida Arwa the Sulaihid of Yemen' (1931) *JRCAS*, xcviii. 505; 'The *Rasā'il Ikhwānu'ṣ-Safā*' (1932) *Der Islam*, xx. 281, and other papers.

[5] (1931) *Der Islam*, xix. 243 on 'Hebraische und syrische Zitate in ismailitischen Schriften'; see also 'Notes on some Ismā'īlī MSS.' by A. S. Tritton (1933) *BSOS*. vii. 33.

discovering a rule of law in order to decide a point which has arisen in the course of a judicial proceeding, nor merely to satisfy one's curiosity about the detailed practices of one particular school, but because in many instances, legal doctrines reflect in an unmistakable manner the view society takes, at a particular time and under given conditions, of certain social problems. For, according to an illustrious modern jurist, 'law will never again be looked upon solely as a command, but as a function of society, which to be understood, must be considered in alliance with the study of the whole structure of society'.[1] The views of Qāḍī an-Nu'mān may differ from those of Manu or Savigny, Montesquieu or Bentham, Kemal or Lenin, and yet for understanding the social structure of the times, the close study of law and legal theory is indispensable. The Fatimid Caliphate in Egypt was a period of remarkable brilliance in many respects, and any facts which would throw a light on the social structure of those times would be most welcome. This is the aspect which attracts me most, and the study of the *Da'ā'im* has been undertaken principally for its human interest.

Secondly, in India at any rate, the *Da'ā'im* is a text applicable to a large and flourishing trading community of Western Ismā'īlīs, the Bohoras.[2] The Bohoras are to be

1 C. K. Allen, *Law in the Making* (Oxford, 1927), 23.

2 The current spelling of the word is 'bohra', as the prevalent pronunciations are 'bohrā', 'bōrā', 'bōrī', 'vōrā' and even 'hōrā But etymologically *bohōra* (*vohōra*) is more correct. It is a word which means a *merchant* and is derived from the Gujarati '*vohōrvu*', *to trade*. In the Arabicized Gujarati of the Bohoras, it is written بهورا and the plural is بواهر. Sometimes it is also written بوهرة and بهرة. The meaning of the word 'bohora' is clearly explained in a MS. belonging to the Bombay Branch R.A.S. See my *Descriptive List of the Arab. Pers. and Urdu MSS. in BBRAS*, 7. For further information see *EI*, i. 738; *Bombay Gazetteer* (1899) ix. Part ii, 25–34; R. E. Enthoven, *Tribes and Castes of Bombay* (1920) i. 197–208; and my *Introduction to the Study of Mdn. Law*, 32, notes 2 and 3. Much useful information

divided into Dā'ūdīs, the richest and largest of these communities in India, the Sulaimānīs,[1] the so-called 'Alyās,[2] the Malaks of Nagpur, C.P.,[3] the Nāgoshias,[4] and last but not the least, the many dissenters from the authority of the *dā'ī* of the Dā'ūdīs, who although excommunicated, still preserve intact their belief in Ismā'īlī doctrines and assert that *īmān* is a question of personal faith, and as such, no human being, not even the *dā'ī*, can possibly excommunicate them. Many of them are very learned, and in spite of persecution and difficulties,[5] they

may also be obtained from *Gulzare Daudi* by Mian Bhai Abuui Husain (Burhanpur, C.P., 1920, p. 223). But reliance cannot be placed on it as it contains many errors and seems to be of a somewhat controversial nature. The Bohoras according to the Census of 1921, number 1,53,363 in India; out of which as many as 1,32,299 are to be found in the Bombay Presidency (1921, *Census Report*, vol. i, part ii, pp. 151 and 161).

[1] So-called after one Sulaimān b. Ḥasan (died 1005/1597), whom they accepted as *dā'ī* instead of Dā'ūd b. Quṭb Shāh, whom the Dā'ūdīs accepted. The religious principles and beliefs are identically the same in the two communities. In number they are about equal; but the stronghold of the Sulaimānīs is the Yemen, while the Dā'ūdīs are practically confined to India. The Sulaimānīs separated in 1588.

[2] Called after one 'Alī who led the rebellion against the Da'wat, as it then was. Separated in 1624.

[3] This community is mentioned in the Privy Council decision reported in (1930) 32 *Bom. Law Rep.*, 1538.

[4] Separated in 1789. Strict vegetarians, as their name implies. They are a very small community of converts from Hinduism of whom little is known.

[5] Much information about these dissenters and their views may be obtained from the judgement in the recent 'Burhānpūr Dargāh Case', Suit No. 32 of 1925, Court of 1st Class Sub-Judge, Burhanpur, C.P. *Seth Tayabali Mahomedali* v. *Mulla Abdulhusain and Others*. The second defendant was the Mullaji Saheb, the *dā'ī* of the Dā'ūdīs, Sardar Syedna Taher Saifuddin. Judgement was delivered on 2 January 1931. I understand there is going to be an appeal. In this judgement it was held that a number of Dā'ūdī Bohoras do not believe in the present *dā'ī* as *ad-Da'ī al-Muṭlaq*, but merely as *ad-Dā'ī an-Nāẓim*. In § 40 of the judgement, another schism, the Mehdibagh sect, is also mentioned. They separated some time between 1309–1314 A.H., some 35 years ago.

keep up their religious independence and maintain the study of Arabic and *Ḥaqā'iq*.[1] To all these the law courts in India would apply the law as laid down in the *Da'ā'im*. From this point of view it is most unfortunate that, except for occasional references in Tyabji's *Principles of Muhammadan Law*[2]—not to the text of the *Da'ā'im*, nor to verified translations of extracts, but merely to notes prepared by a learned Ismā'īlī doctor—and a brief manual to which reference will be made later, no part of the *Da'ā'imu'l-Islām* has ever been edited or translated.[3] When questions do arise, the Courts take no notice, generally speaking, of this branch of the law and erroneously proceed on the basis that 'Shia' law—a vague and inaccurate term[4]—is applicable. Now this 'Shia' law may, strictly speaking, be Ithnà 'Asharī, Zaidī, Ibāḍī, or Ismā'īlī, to say the least. Of these distinctions the Courts ordinarily take no notice, and Ithnà 'Asharī principles—this is the 'Shia' or 'Imami' law of the courts in India—are applied as a matter of course to Bohoras. It has been shown that in many cases Ithnà 'Asharī rules differ from those of the Ismā'īlīs, *Mut'a* and bequests to heirs for instance,[5] where the Ismā'īlīs agree with the Sunnites rather than with the 'orthodox' Imāmīs. Why this should be so cannot at present be fully explained, but for any proper study of these and allied questions, an accurate edition of the *Da'ā'im* is of prime necessity.

[1] For the meaning of this word, see notes 1 and 2 to page 23 below.

[2] 2nd ed., Bombay, 1919, 33 and introduction. This has also been pointed out by me in (1931) 33 *Bom. Law Rep.*, Journal, 31 in discussing *Mut'a*.

[3] The *Mustadrak* however, as will shortly be seen, cites the *Da'ā'im* continuously. And two extracts have been published by me: (1) on Bequests to Heirs (1929) *JBBRAS*, 141; and (2) on *Mut'a* (1932) *JBBRAS*, 85.

[4] Recently Fitzgerald, in his *Muhammadan Law* (Oxford, 1931), has also repeated this inaccuracy. See Fyzee, *Int. Mdn. Law*, 30, note 1.

[5] See note 3 above.

The only attempt made so far to present the *Da'ā'im* to Indian readers in any shape or form is a small booklet, published both in Urdu and in Arabic, entitled *Sharḥu'l-Masā'il*,[1] by Mullā Ḥājī Ghulām Ḥusain Ṣāḥib. The preface says that since the *Da'ā'imu'l-Islām* is written in Arabic, and the people in India (' brethren in the faith ', viz. the Sulaimānī community, because the author is a Sulaimānī divine) could not avail themselves of the information contained in it, the author first abridged the second volume in Urdu for general use. Certain obsolete matters like slavery, etc. have been omitted Later, in 1338/1920, it was rendered into Arabic, and submitted to the *dā'ī* Saiyidnā 'Alī b. Muḥsin [2] in the Yemen, who permitted its publication. The Urdu version consists of 144 pages ; the Arabic is considerably shorter, being only 122 pages. It deals briefly with almost all the usual topics, and has a table of contents and an inheritance chart at the end. Marriage is treated at a proportionately greater length, and many interesting topical observations—not to be found in the original—are made. The chapter on *Waṣāyā* is very short, only four pages being devoted to it. Apart from its extreme brevity, extraneous matter is also introduced, thus making the manual only an approximation of the original text, and of little use in the courts of law or for detailed study of the contents of the *Da'ā'im*.

The study of the *Da'ā'imu'l-Islām* is interesting also from another point of view. Our knowledge of the development of Muslim Law and its legal history is extremely meagre. An early text, written by one who seems to have been a Mālikī at first, and whose legal principles are in some cases in accord with those of the Sunnites, would be of great value. Moreover

[1] Urdu edition, Bombay, Muṣṭafā'ī Press, no date; Arabic edition, Bombay, Jehāngīr 'Alawī Press, no date; *circa* 1340 A.H.

[2] His name is not mentioned in the list of 44 *dā'īs* given in the Sulaimānī *Ṣaḥīfatu'ṣ-Ṣalāt* (Bombay, no date, *circa* 1340 A.H.), 549–552. He is the present *dā'ī*, the 45th.

it may possibly suggest an explanation why and how there is such a wide gulf between the Ḥanafī and the Ithnà 'Asharī interpretation of law. For although we have some knowledge of Sunnite jurisprudence, Shī'ite law is on the whole much less known, and any precise information regarding the legal principles of such an interesting sub-school as the Western Ismā'īlī is very welcome. A manual written by the supreme Qāḍī of al-Mu'izz and said to be in actual use in Fatimid times, and which to this day applies to this community, should surely be available to us in as original a form as it is possible for us to reconstruct.

The style of the work is midway between that of a tradition book, pure and simple, and a work on *fiqh*. Generally the chapter commences with some verses of the *Qur'ān* and traditions of the Prophet. Then we have *riwāyas* handed down from one or more of the first six Imāms,[1] but mostly from Imām Ja'far aṣ-Ṣādiq. Imām Ja'far is indeed the fountain-head of Ismā'īlī Law. The *Kitābu'l-Waṣāyā* consists of 45 *riwāyas*; and his authority is invoked no less than 31 times, 3 times in the first part and 28 times (out of 36) in the second. It is to be observed that the author never invokes the authority of later Imāms. This fact has been commented upon by many writers and for the moment at any rate, I have no reasonable explanation to offer.[2] After the *riwāya*, which may consist of a story or an answer to a question given by the Imām, explanatory words and arguments are added by the author occasionally. And in some cases it is not easy to decide whether the words form part of the Imām's answer or the author's argument. This often happens in the second part of the *Kitābu'l-Waṣāyā*, which deals almost exclusively with legal matters.

Generally speaking, the language employed is simple and

[1] See note to § 19 below.

[2] *EI*, iv. 355; *Rauḍātu'l-Jannāt*, 658; *Mus.* iii. 313. The Shī'ite writers suggest that he did not report traditions from later Ithnà 'Asharī Imāms for fear of the Ismā'īlī divines.

no special difficulties arise. But as in all legal texts the pronouns cause the greatest difficulty. I do not propose to discuss here in detail the vocabulary or the style of the author, because, as I am preparing an edition of the legal portion of the *Da'ā'imu'l-Islām*, together with translation and notes, an opportunity will be found later to discuss these and allied questions. Moreover a wider acquaintance with and a deeper study of Ismā'īlī legal literature is necessary before venturing upon such a difficult task. The use of certain words however requires comment; and to take but one example, the word *waṣīya* is used in at least four different senses. Firstly, it means a *will* or *testament*, and this may be both oral or written. The title of the chapter is كتاب الوصايا. The well-known tradition handed down from numerous sources, Sunnite as well as Shī'ite, is ليس ينبغي للمسلم ان يبيت ليلتين الّا و وصيته مكتوبة عند رأسه (§2). Another example is to be found in §5. This is a common use of the word and examples need not be multiplied.

Secondly, it means *moral exhortation*, usually on the point of death, and in this case the verbal forms derived from the verb أَوْصَى are common. For instance, §8, line 1; §9, line 2. The verbal force is also seen in a phrase like ذكر الامر بالوصية (Title of Part A) which means 'account of the injunction to *make* Wills'. Examples of verbal usage are, §9: امرني رسول الله ان أُوصِي اليك كما أَوْصَى إِلَيَّ الخ; and §10: يا الا أُوصِي أُوصِ بتقوى الله قال امير المؤمنين. Of a lady, §29, it is said: اوصت فاطمة بنت اسد ..... و قالت الخ.

Thirdly, it means a *legacy*, *bequest*. Part B of the *Kitābu'l-Waṣāyā* is full of examples of this kind. In the verse of the *Qur'ān* cited at the beginning of the Book of Wills, Part A, the word *waṣīya* seems to be used in this sense.

Fourthly and lastly, a rare use of the word is to be found in §41; لا يُزيل الوصيَّ عن الوصية الا ذهاب عقل الخ. Here the

capacity or *power* of the executor seems to be indicated, and therefore it means *executorship*. This is the only example of this usage that I have come across so far.

The Author : Qāḍī an-Nu'mān

As a fuller and more complete account of the Qāḍī is shortly to appear in the *Journal of the Royal Asiatic Society*, London, I shall content myself here with mentioning the salient facts of his life and by giving a complete list of his works.

Apart from the extant works of Qāḍī an-Nu'mān, many of which contain autobiographical material, the most important source of information that we possess is the *'Uyūnu'l-Akhbār* of Saiyidnā 'Imādu'd-dīn Idrīs b. Ḥasan, 19th *dā'ī* of the Yemen (died, Yemen, 872/1468). The sixth volume of that work contains a full account of the Qāḍī's life and a detailed and descriptive list of his works (folios 33–41).[1] The last portion of the fifth volume also contains much relevant information. The other sources used by me are Ibn Khallikān's *Biographical Dictionary*,[2] and Ibn Ḥajar's *Raf'u'l-Iṣr*.[3] The following may also be consulted : R. Gottheil, ' A Distinguished Family of Fatimide Cadis (al-Nu'mān) in the Tenth Century ', *Journal American Oriental Society*, 1907, Vol. 27, 217–297 ; and W. Ivanow, *A Guide to Ismaili Literature* (to be published shortly by the Royal Asiatic Society, London), 37–40.

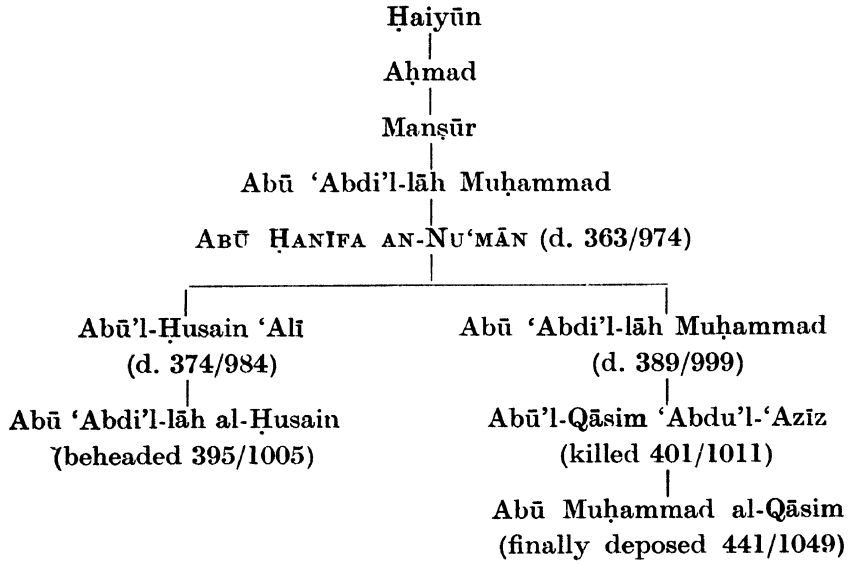
Name. The *Qāḍī* Abū Ḥanīfa an-Nu'mān b. Abī 'Abdi'l-lāh Muḥammad b. Manṣūr b. Aḥmad b. Haiyūn at-Tamīmī (al-Ismā'īlī al-Maghribī).

[1] The references to the fifth and sixth volumes of the *'Uyūn*, are to modern copies dated 1351/1932, and consisting of 401 and 320 folios respectively. The complete work is in seven volumes of about three to four hundred folios each and deals with the general history of Ismailism. It is fully and accurately preserved.

[2] Trans., de Slane. Vol. iii, 565, *et sqq.*

[3] *Kitābu'l-Wulāt* of al-Kindī, ed. R. Guest (G.M.S., xix), 586-587.

Pedigree. The following is the genealogical tree of the Nu'mān family of jurists[1]:



Birth. The exact date of Nu'mān's birth is not known.[2]

Death. Old Cairo, Friday, 29 Jumādà ii, 363/27 March, 974 (or according to some the following day).[3]

Madhhab. The Qāḍī appears to have been derived from a Mālikī stock from Qairawān, adopting the Ismā'īlī faith early in life.

Life. As all the extant works of Qāḍī an-Nu'mān have not yet been studied fully by me, it is not possible to give many details regarding his life. He began by entering the service of Mahdī, and continued to serve the first four Caliphs, viz. Mahdī, Qā'im, Manṣūr, and Mu'izz. His rank and position

[1] Gottheil, *JAOS*, 27, 238.

[2] Massignon (*'Aḥabnāma*, 332, No. 16) states that Nu'mān was born in 259 and died in 363 at the age of 104. In this he seems to have followed Gottheil (*JAOS*, 27, 227). But this opinion is based on insufficient evidence.

[3] *'Uyūn*, vi. folio 177 ; Ibn Khallikān, and other sources.

went on increasing in the reign of each Caliph-Imām, and he reached the zenith in the time of the Fourth Caliph, Mu'izz. Officially he does not seem to have been appointed Qāḍī'l-Quḍāt, but his opinion carried great weight and was, in most instances, the deciding factor. In the Da'wat he is generally held to have attained the rank of *ḥujjat*.

Character. Qāḍī an-Nu'mān was a man of great talent, learning and accomplishments: learned as a scholar, prolific as an author, upright as a judge. Not many external facts of his life are known. Possibly he was a recluse immersed in juristic studies and engaged in the composition of his numerous works. He was the founder, and is rightly regarded as the greatest exponent, of Ismā'īlī jurisprudence. According to the Ismā'īlī tradition he wrote nothing without consulting the Imāms who were his contemporaries, and his great work, *Da'ā'imu'l-Islām*, is regarded as almost the joint work of Imām Mu'izz and Qāḍī an-Nu'mān, and therefore of the highest authority. It was the official *corpus juris* after the time of Mu'izz, as a despatch of Ḥākim to the *dā'ī* of the Yemen clearly shows. Hence Nu'mān is one of the most illustrious of Ismā'īlī authors.

Works.

Preserved (by Western Ismā'īlīs) ..	18
Partially preserved	4
Totally lost	22
TOTAL ..	44

Of these 42 are mentioned in the *'Uyūn*, vi and 2 (Nos. 14 and 44) in the *Fihristu'l-Majdū'*, an Ismā'īlī bibliography. Ibn Khallikān only mentions 6 (Nos. 3, 5, 6, 8, 18, and 37) of his works, and in most instances the names given by him are incorrect. The works *partially preserved* are Nos. 4, 17, 21, and 22. It is most unfortunate for Ismailism and Ismailitic studies that more than half of his works have been lost during the last five centuries, since the days of Saiyidnā Idrīs b. Ḥasan.

Of the Qāḍī's works, only 5 are known to be preserved in European libraries; the rest are quite unknown. An incomplete copy of the *Sharḥu'l-Akhbār* (No. 33) exists in the Staatsbibliothek, Berlin. Parts 13 and 14 of this work, and three others, viz. *Da'ā'imu'l-Islām*, I (No. 9), *Asāsu't-Ta'wīl* (No. 21), and *al-Majālis wa'l-Musāyarāt* (No. 40) have recently been acquired by the School of Oriental Studies, London.[1]

Classified List

* Works marked with an asterisk are of great importance.
P=Preserved.
PP=Partially preserved.
L=Totally lost.

A. Fiqh (Canon Law)

*1. كتاب الإيضاح—*Kitābu'l-Īḍāḥ* (L).
2. مختصر الايضاح—*Mukhtaṣaru'l-Īḍāḥ* (L).
3. كتاب الإخبار—*Kitābu'l-Ikhbār* (P).
*4. الينبوع—*al-Yanbū'* (PP).
5. الاقتصار—*al-Iqtiṣār* (P).
6. الاتفاق و الافتراق—*al-Ittifāq wa'l-Iftirāq* (L).
7. المُقتصِر—*al-Muqtaṣir* (L).
8. القصيدة المنتخبة—*al-Qaṣīdatu'l-Muntakhaba* (P).
9. دعائم الإسلام—*Da'ā'imu'l-Islām* (P).
10. مختصر الآثار—*Mukhtaṣaru'l-Āthār* (P).
11. كتاب يوم و ليلة—*Kitāb Yaum wa Laila* (P).
12. كتاب الطهارة—*Kitābu't-Ṭahāra* (P).
13. كيفية الصلوٰة—*Kaifīyatu'ṣ-Ṣalāt* (L).
14. منهاج الفرائض—*Minhāju'l-Farā'iḍ* (P).

[1] (1933) *BSOS*, vii. 33–39.

B. Munāẓara (Controversy)

15. الرسالة المصرية فى الرد على الشافعى—*ar-Risālatu'l-Miṣrīya fi'r-Radd 'alà'sh-Shāfi'ī* (L).
16. كتاب فيه الرد على احمد بن شريح البغدادى—*Kitāb fīhi'r-Radd 'alà Aḥmad b. Shuraiḥ al-Baghdādī* (L).
17. الرسالة ذات البيان فى الرد على ابن قتيبة—*ar-Risāla Dhātu'l-Bayān fi'r-Radd 'alà ibn Qutaiba* (PP).
18. اخنلاف اصول المذاهب—*Ikhtilāf Uṣūli'l-Madhāhib* (P).
19. دامغ الموجز (?) فى الرد على العتكى (الفتكى ?)—*Dāmighu'l-Mūjiz* (?) *fi'r-Radd 'alà'l-'Itkī* (*Fatakī* ?) (L).

C. Ta'wīl (Allegorical Interpretation of the *Qur'ān*, etc.)

20. نهج السبيل إلى معرفة علم التأويل—*Nahju's-Sabīl ilà Ma'rifati 'ilmi't-Ta'wīl* (L).
21. أساس التأويل—*Asāsu't-Ta'wīl* (PP).
22. تأويل الدعائم—*Ta'wīlu'd-Da'ā'im* (PP).

D. Ḥaqā'iq (Esoteric Philosophy)

23. حدود المعرفة—*Ḥudūdu'l-Ma'rifa* (L).
24. كتاب التوحيد و الامامة—*Kitābu't-Tawḥīd wa'l-Imāmat* (P).
25. كتاب إثبات الحقائق—*Kitāb Ithbātu'l-Ḥaqā'iq* (L).
26. كتاب فى الإمامة—*Kitāb fī'l-Imāmat* (L).

E. 'Aqā'id (Dogmatics)

27. القصيدة المختارة—*al-Qaṣīdatu'l-Mukhtāra* (P).
28. كتاب التعاقب والإنتقاد—*Kitābu't-Ta'āqub wa'l-Intiqād* (L).
29. كتاب الدعاء—*Kitābu'd-Du'ā'* (L).
30. كتاب الهمّة—*Kitābu'l-Himma* (P).
31. كتاب الحُلَى و الثياب—*Kitābu'l-Ḥulà wa'th-Thiyāb* (L).
32. كتاب الشروط—*Kitābu'sh-Shurūṭ* (L).

F. Akhbār and **Sīra** (Tradition and Biography)

*33. شرح الأخبار—*Sharḥu'l-Akhbār* (P).

34. ذات المنن—*Dhātu'l-Minan*, an urjūza (L).

35. ذات المحن—*Dhātu'l-Miḥan*, an urjūza (L).

G. Ta'rīkh (History)

36. مناقب بنى هاشم—*Manāqib Banī Hāshim* (P).

*37. افتتاح الدعوة—*Iftitāḥu'd-Da'wat* (P).

H. Wa'ẓ (Sermons)

38. معالم المهدى—*Ma'ālimu'l-Mahdī* (L).

39. الرسالة إلى المرشد الداعى بمصر فى تربية المؤمنين—*ar-Risāla ilà'l-Murshid ad-Dā'ī bi Miṣr fī Tarbiyati'l-Mu'minīn* (L).

*40. كتاب المجالس والمُسايَرات—*Kitāb al-Majālis wa'l-Musāyarāt* (P).

I. Miscellaneous

41. تأويل الرؤيا—*Ta'wīlu'r-Ru'yā* (P).

42. مناماتُ الأئمة—*Manāmātu'l-A'imma* (L).

43. كتاب التقريع و التعنيف—*Kitābu't-Taqrī' wa't-Ta'nīf* (L).

44. مفاتيح النعمة—*Mafātīḥu'n-Ni'ma* (P).

J. Apocrypha (Works sometimes erroneously attributed to Qāḍī an-Nu'mān.)

(1) تقويم الأحكام—*Taqwīmu'l-Aḥkām.*

(2) الراحة و التسلى—*ar-Rāḥat wa't-Tasallī.*

(3) سيرة الأئمة—*Sīratu'l-A'imma.*

II. THE SOURCES OF THE TEXT

The text of the *Kitābu'l-Waṣāyā* from the second volume of *Da'ā'imu'l-Islām* is based on four manuscripts designated

CORRIGENDUM

p. 15, lines 4-5.

For and D is in a Sulaimānī collection

read and C is in a Sulaimānī collection

A, *B*, *C*, and *D*, and one printed source, *Mustadraku'l-Wasā'il*, a well-known Ithnà 'Asharī corpus of traditions. None of the MSS. is ancient. Portions of *C* seem to be the oldest; *D* is dated 1126/1714. *A*, *B*, and *D* are in my possession, and *D* is in a Sulaimānī collection.

(1) MS. *A* (Dated 1312/1895.)

Da'ā'imu'l-Islām, Volume II, 288 folios; 17 lines. Outside: 6 by 9 by 1½ inches. Lines: 3½ by 6 inches. Clear Indian *Naskh*. Not vocalized. Thin English hand-made paper, bound in native maroon leather. The book is full of marginal notes and corrections. Each *riwāya* begins in red ink, and the chapter headings are invariably in red ink. The first 31 pages are numbered, thereafter neither the folios nor the pages are indicated.

Begins:

قال الله عز و جل يآءيها (*sic*) الذين آمنوا اذا نودى للصلوة من يوم الجمعة فاسعوا الى ذكر الله و ذرو البيع الى قوله وابتغوا من فضل الله و اذكروا الله كثيراً لعلكم تفلحون[1] الخ ،

The volume ends with:

تم المجلد الثانى من كتاب دعائم الاسلام فى اليوم الثامن من شوال سنة ١٣١٢ من هجرة النبى خير الانام عليه و آله من الله زاكى الصلوة و السلام ، (8 Shawwāl, 1312=5 April, 1895).

The book is copied by at least two hands, one of which is unknown. Colophon:

كتاب البيوع و كتاب النذور و كتاب الاطعمة و كتاب الاشربة من هذا الكتاب بخط اقل عبيد داعى الله فيض الله بن سيدى العلامة محمد على الهمدانى كتبه فى سنة ١٣١١هـ ، (1311/1894).

[1] 62, 9-10.

Contents :

Chap.	1.	كتاب البيوع	folio 1.
,,	2.	كتاب الايمان و النذور	,, 37.
,,	3.	كتاب الاطعمة	,, 43.
,,	4.	كتاب الاشربة	,, 56.
,,	5.	كتاب الطب	,, 60.
,,	6.	كتاب اللباس	,, 69.
,,	7.	كتاب الصيد	,, 76.
,,	8.	كتاب الضحايا و العقائق	,, 82.
,,	9.	كتاب النكاح	,, 86.
,,	10.	كتاب الطلاق	,, 123.
,,	11.	كتاب العتق	,, 148.
,,	12.	ذكر الهبة	,, 160.
,,	13.	ذكر الصدقة	,, 163.
,,	14.	كتاب الوصايا	,, 174.
,,	15.	ما يجوز و ما لا يجوز من الوصايا	,, 181.
,,	16.	كتاب الفرائض	,, 186.
,,	17.	ذكر تحريم سفك الدماء	,, 211.
,,	18.	ذكر القصاص	,, 213.
,,	19.	ذكر الديات	. 218.
,,	20.	ذكر المعاقل	,, 219.
,,	21.	ذكر الجنايات	,, 221.
,,	22.	ذكر الحدود	,, 235.
,,	23.	كتاب السراق	,, 250.
,,	24.	كتاب الردة و البدعة	,, 255.
,,	25.	كتاب الغصب	,, 258.

Chap. 26.	كتاب العارية	folio 260.
,, 27.	كتاب اللقطة	,, 263.
,, 28.	كتاب القسمة و البنيان	,, 265.
,, 29.	كتاب الشهادات	,, 270.
,, 30.	كتاب الدعوى	,, 275.
,, 31.	كتاب آداب القضاة	folios 279–288.

(2) MS. *B* (Dated 1325/1907.)

370 folios. Outside: 8½ by 11½ by 1½ inches. Lines: on p. 1, 12 lines; p. 2, 16 lines; pp. 3–17, 17 lines; pp. 18–end, 12 lines to the page. Inside: 4 by 7 inches. Modern, ugly *Naskh*, unformed. Thin European paper of poor quality. Bound in full native brown calf. Slightly worm-eaten. Not vocalized. Many diacritical points missing.

Begins as *A*, but there is no title; and in its stead a blank space of about 2 inches is left. The margins are wide, and on the first page, in the margin, there are a few lines of the *Kitābu'l-Yanbū'*, 15 lines in red ink and 12 in black. This note begins:

كتاب الينبوع ، و هو ثمانية و عشرون بابا ، بسم الله الرحمن الرحيم ،
كتاب البيوع ، قال الله تعالى يا ايها الذين آمنو لا تاكلوا الربوا الخ ،

Then we have باب ما يجوز من البيوع و ما لا يجوز and after a few lines the scribe stops.

Each *riwāya* is not marked in red ink as is usual in the MSS. of the *Da'ā'im*, but there always is an indication in the margin by the words وعن. The chapter headings are invariably in red ink.

Ends:

تم كتا (ب) دعائم الاسلام فى الحلال و الحرام و القضايا و الاحكام
عن اهل البيت عليهم افضل الصلوة و السلام بحمد الله المنان

فنى الـ ..... [1] و الرضوان و مادة ولى الزمان الا يوم الاول [2] من شهر جماد اخر (*sic*) سنة ١٣٢٥ من الهجرة النبوية صلوات الله على صاحبها و على اله الطيبين الطاهرين ‘ (1 Jumādá ii, 1325=12 July, 1907).

Colophon :

كتبه احقر العباد اقلهم و اكثرهم جرماً حسين على يحيى الهمدني [3] اليمانى من محل جرمه تمت و عمت ‘

(3) MS. *C* (Undated. In part *circa* 300 years old.)

223 folios. Outside: 6 by 9 by 1½ inches. 17 to 19 lines. Well-formed Arabian and Indian *Naskh*. Partially vocalized and fully punctuated by inverted commas in red ink. Paper of local manufacture. Badly worm-eaten. Numerous marginal corrections. Full brown leather. A very accurate copy of the text.

This MS. consists of three different parts.

i. The most modern. Folio 1 (one page). (Indian *Naskh*.)

ii. Intermediate. Ff. 2–4 ; 22–25 ; 169–187 ; and 190–223. (Indian *Naskh*.)

iii. The oldest. Ff. 5–21 ; 23-24 ; 26–168 ; and 188-189. (Arabian *Naskh*.)

A fine Yemenite Sulaimānī MS. The oldest portion, in which the *Kitābu'l-Waṣāyā* is contained, is the best MS. available to me. It seems to be about 300 years old. Neither the name of the scribe, nor the date is mentioned. The MS. has been repaired at least three times.

Begins and ends as usual.

[1] This word is illegible.

[2] *Sic.* Should be اليوم الاول .

[3] *Sic.* Not Hamdānī.

(4) MS. *D* (Dated 1126/1714.)

293 folios. Outside: 7 by 10 by 2 inches. Line 4 inches. The lines to the page differ; folios 1–3 are modern and contain about 17 lines; folios 4–11, 19 lines; folios 12 onwards, 16 to 18 lines.

Legible Indian *Naskh*. Partially vocalized. The paper is damaged by water and is in a very bad condition. Badly worm-eaten, repaired carefully recently, and bound in full blue buckram. Wide margins, full of corrections and scholia. Originally not a very accurate MS., its value lies in the numerous corrections which have been made by successive readers.

Begins as usual. Ends:

[f. 293 *a*, l. 13] تم كتاب دعائم الاسلام فى الحلال والحرام والقضايا والاحكام والحمد الله (*sic*) لا اله غيره و لا معبود سواه، و صلى الله عليه (*sic*) سيدنا محمد ابن (*sic*) عبد المصطفى و على اله الاطهار، اتممت بكتاب دعائم الاسلام و اركان [f. 293 *b*] بلسان سيدى ومولاءي اسمعيل جى بن سيدى صفى الدين شيخ ادم المرحوم والجنان (?) فى وقت داعينا و مالكنا نور الزمان اطال الله بقاءه فينا لنفو..... فيض حاجاتنا بامان مع ابيه الشريف و قرة عينى عبد الكريم ذو الخلف الحسن و الاحسان بحق محمد و اله العدنان ما دور الفلك فى الدوران كتبت بهذا الكتاب فى درس نور الدين فى اسلام پور و حسبنا الله نعم الوكيل و نعم المولى و نعم النصير، قد فرغ من نساخة ضعيف النحيف محتاج رحيم بن بهائى جى بن داؤد جى بن راجن جى بن موسى جى ساكن سيرونج تاريخ سادس عشر من شرج (*sic*) جماد (*sic*) الاول سنة ١١٢٦، (16 Jumādà i, 1126=31 May, 1714).

(5) *Mustadraku'l-Wasā'il.*

Mustadraku'l-Wasā'il wa Mustanbaṭu'l-Masā'il. By Mīrzā Ḥusain b. Muḥammad at-Taqī an-Nūrī aṭ-Ṭabarsī. Three volumes, lith. in Tehran. Vol. i, 1318/1900 ; Vol. ii, 1319/1901 ; Vol. iii, 1321/1903. Pages 602, 646, and 878 respectively.

This is a well-known Shī'ite collection of traditions and supplements the *Wasā'ilu'sh-Shī'a* (3 vols., Tehran, 1323/1905. Repeatedly printed in Persia), by Muḥammad b. Ḥasan al-Ḥurr al-'Āmilī, which is a collection, according to subjects, of all the traditions to be found in the canonical 'Four Books'.[1] The author of the *Mustadrak* states that he desired to collect all the traditions which the author of the *Wasā'il* had omitted. See his introduction and iii. 289. The author, according to his own note (iii. 877), was born on 18 Shawwāl, 1254=5 January, 1839. The first book in volume i, *Kitābu'ṭ-Ṭahāra*, was finished in 1296/1879 ; from the last lines of the third volume it appears that the book was finished in 1319/1901. The date of the death of the author does not appear, the book seems to have been published in his lifetime.[2]

The author of the *Mustadrak* cites the *Da'ā'im* fully and accurately, not in the sequence in which the traditions are to be found in the *Da'ā'im*, but according to his own division of the subject. The three volumes of the *Mustadrak* comprise the usual subjects and are divided into various *kitābs*. These *kitābs* are again divided into *bābs*, and in these *bābs* the traditions are numbered, and the authority for each tradition is given by mentioning the name of the book in every case. *Kitābu'l-Waṣāyā* is to be found in the second volume, pages 517–529. Total of *bābs*, 1363 ; and traditions, 4830.[3]

[1] The 'Four Books' are mentioned by Strothmann in his article on the *Shī'a*, *EI*, iv. 354.

[2] An account of the *Mustadrak* has been given by me in discussing *Mut'a* in Ismā'īlī Law (1932) *JBBRAS*, 85.

[3] *Mus.* iii. Contents, p. 25.

The third volume from page 290 to the end, contains 12 appendixes (*fawā'id*), the first dealing with the books cited, the second with the authors of these books; then follow accounts of the four books, and their authors and so on. The second appendix contains a long and valuable discussion of Qāḍī an-Nu'mān's life and work (iii. 313).

Thus the *Mustadrak* is of great value for the establishment of the text of the *Da'ā'im*.

None of the MSS. at my disposal is ancient and therefore no finality can be claimed for the purity of the text of any of them. *A*, *B*, *C*, and *D* merely indicate the sequence of time in which I came to have the opportunity to examine them. First, I obtained *A* after long delay and vexation, and began copying out the text from it. The folios marked in the text of the *Kitābu'l-Waṣāyā* printed below are according to the numbering in *A*. *A* is a fairly good MS., but contains many copyist's slips and omissions. After a longish interval I got *B*, but on collation I found that this was a distinctly worse MS., and, except occasionally, threw very little light on real difficulties. The copyist of *B* obviously cares little for such trifles as grammar. The MS. which above all others was most helpful was *C*. The original parts, although badly worm-eaten, are the most ancient of all the MSS. at my disposal. It is written by a scholar and carefully corrected; it is fully punctuated and partially vocalized. An inverted comma in red ink marks the end of a sentence, and for many a difficult or doubtful passage, the vocalization lightens the editor's task. I am only sorry I could not obtain the MS. from the beginning in order to base the text principally on it. Still in almost all cases of real difficulty I have preferred the readings in *C*. *D* came to my hands very late, and collating it with the text already prepared, I found a few interesting marginal glosses and occasional useful readings. The MS. on the whole is inaccurate; but on account of its comparative age and numerous corrections, it possesses a certain value.

The text of the *Kitābu'l-Waṣāyā* preserved in the four MSS.

is on the whole remarkably uniform. The book seems to have been preserved with singular care for the last three hundred years or so in India, and there are no material variations in the text. All the four MSS. except *C*, are of Indian origin, and it is almost certain that they represent an original that came to India fairly early. The earliest MS. of the second volume of the *Da'ā'imu'l-Islām* that I have seen is dated about the middle of the 9th century A.H. (middle of the 15th century A.D.). Unfortunately it has been impossible to collate the text given below with it, but I have read some passages from the *Kitābu'l-Waṣāyā* in it and found that the text does not differ materially.

The *Mustadrak*, in which *riwāyas* from the *Da'ā'im* are often cited, also gives almost word for word the same version. I have been unable to trace some *riwāyas* in it, for instance, the *wasīyas* in Part A below ; but wherever there is a citation, it is abundantly clear that the original before the author was almost exactly the same that we possess. This fact is interesting, for it shows that for at least some 300 years, both in India and in Persia, and also in the Yemen, if *C* is accepted as a Yemenite MS., the traditional text of the work is the same. This text of the *Kitābu'l-Waṣāyā* is now before us, and it represents the *current tradition* in which it is handed down by students and teachers for purposes of religious instruction. It is seldom referred to in the law courts. How far it differs from what Qāḍī an-Nu'mān wrote in the early part of the fourth century of the Hijra, some six centuries before the earliest MS. examined by me, it is impossible to say at present.

Very few catalogues are available to me in Bombay, but from the investigations made by me and from the kind answers of some European scholars, such as my teacher Professor Nicholson of Cambridge, it seems that there is no known copy of the *Da'ā'im* in any European library.[1] If any scholar could

[1] A copy of the first volume has recently been acquired by the School of Oriental Studies, London. (1933) *BSOS*, vii. 33–39.

kindly enlighten me on this subject I shall be very grateful. I feel certain, however, that in the Yemen, the stronghold of the Western Ismā'īlīs, some very ancient MSS. must exist. Similarly, it seems not improbable that in Egypt and Syria some MSS. may exist unknown to the generality of scholars. But at any rate in India, the Western Ismā'īlīs preserve the text with singular accuracy, venerate it greatly, study it assiduously, and hide it zealously from the profane gaze of those who are outside the pale of the Holy Da'wat. Why the book is kept so secret, one does not know, for it does not contain, to the uninitiated and the unillumined eye at any rate, the principles of *Ḥaqā'iq*,[1] the esoteric Neo-Platonic philosophy developed by the Western Ismā'īlīs, and which is their special pride and distinction.[2]

As regards the text, an attempt has been made to give all the variant readings in the MSS. and the *Mustadrak*, however useless or unimportant they may seem. Even copyists' errors are generally recorded. This has been done with the set purpose of demonstrating how little the five sources differ among themselves. To this rule there is only one exception. Variations in pious phrases are not recorded ; usually those in *A* are kept : and where it omits them, I have joyfully refrained from adding any surplusage. The text is partially vocalized, and an honest attempt has been made to give the *i'rāb* in all cases where there is the slightest possibility of doubt or difficulty ; so that at least one reasonable reading is presented to the reader. I have not

[1] This word has often been misunderstood as the name of a particular book : in reality it is the name of a science, or rather a system of Neo-Platonic esoteric philosophy; Arnold, for instance, in *EI*, i. 739 (s.v. ' Bohoras ') speaks of *al-Ḥaqā'iq* as a book, and also of ' *Dā'im al-Islām* '.

[2] Few European scholars have been able to study this science in detail. Apart from such articles in *EI*, as Bāṭinīya, Ismā'īlīya, Ikhwānu's-Ṣafā', Ḳarmaṭīya, etc. ; see Ivanow, *Ismailitica* (Calcutta, 1922), and his recent paper on ' An Ismailitic work by Naṣīru'd-dīn Ṭūsī ', *JRAS* for July, 1931, 527–564 ; but above all, his recent *Guide to Ismaili Literature* (R.A.S., London, 1933).

however been very consistent in the vocalization. Occasionally, in addition to keeping in view the principle just mentioned, I have also inserted the short vowels wherever any of the MSS.—and particularly *C* and *D*—have inserted them.

In translating the Arabic into English, I have attempted, albeit despairingly, to follow the method and principles of my revered teacher and friend, Professor R. A. Nicholson of Cambridge, whose rendering of the *Mathnawī* of Jalālu'd-dīn Rūmī is a monument of learning and insight, and shows how accuracy can be combined with a sense of style. The difficulty of the task has not been underestimated ; and no effort has been spared for achieving the dual object of faithfulness to the Arabic original and simplicity of diction in the English version.

III. SUMMARY OF THE LAW OF WILLS

The *Kitābu'l-Waṣāyā* consists of two parts : the first part, dealing with the injunction to make wills, contains religious and theological matter. It is the second part, §§10–44, dealing with valid and invalid wills, to which we must direct our attention in order to discover the law of wills and bequests according to the legal system of the Western Ismā'īlīs. Although it contains five times as many *riwāyas*, this part is only about one-half the length of the first. We must now briefly state the legal propositions to be found in the Book of Wills.

In reading what follows, two facts must be carefully borne in mind. Firstly, the *Da'ā'im*, despite the fact that it is the first authority in legal questions among Western Ismā'īlīs, is not exhaustive of the rules of *fiqh* : other works, legal as well as religious, some of which have been mentioned earlier (p. 2), supplement it in many details. Secondly, the summary given below is not a complete statement of all the legal propositions that are contained in, and which may be deduced from, the text of *Kitābu'l-Waṣāyā* ; it professes to be no more than a résumé or summary for general purposes.

Introductory. The *Qur'ān* lays down: *It is prescribed for you that when one of you is face to face with death, if he leave any goods, the legacy is to his parents, and to his kinsmen, in reason;* and that, as far as possible, wills must be made in the presence of witnesses.[1] The making of wills is strongly recommended (§§ 2–4), but it is not compulsory: a man who dies without making a *waṣīya* (will) is declared by the Prophet to be wanting in his consideration for others, and in his wisdom (§ 5), but apparently he is free from sin. The testaments of the Prophet (§§ 5 and 7) and of 'Alī I (§ 9) are cited as examples to be followed, and contain religious and moral injunctions in addition to dispositions of property. The *waṣīya* of 'Alī I in § 9 is most interesting from the purely Ismailitic point of view.

1. *Form of* Wasīya. A *waṣīya* (will) need not be in writing and witnesses are not absolutely necessary. The Prophet's *waṣīya* in § 5 was oral, and there was no formal attestation. And 'Alī's will in § 9 was first made orally and then, to avoid misunderstanding with regard to its contents, reduced to writing. Even words are not absolutely essential: a person who has lost the power of speech may bequeath by means of gestures (§§ 35, 36).

2. *Extent of Testamentary Capacity.* A man cannot bequeath more than a third of his property (§§ 11, 14), without the consent of his heirs (§ 13); and such consent may be given either in the lifetime of the testator[2] or afterwards. A woman, it is distinctly laid down, has the same right of bequest as a man (§ 11a). And it is better, more commendable, not to bequeath to the full extent of the one-third (§§ 11–13); thus leaving more property for the legal heirs. Legacies to non-Muslims are permissible, provided they are lawful in all other respects (§ 27). It is stated

[1] The first verse cited in § 1 (**2**, 176), has been the cause of numerous controversies among commentators and doctors of the law, and its meaning is very obscure. See for instance §§ 19–21 and footnotes to them. The second verse is **5**, 105.

[2] See below, 3. *Bequests to Heirs.*

that legacies for manumitting slaves (§ 15) and for enabling pilgrimages to be performed (§ 16) must be given preference over the other legacies. Such legacies are highly commendable (§ 29). A man may revoke or alter his will at any time (§ 26). Where a man commits an act with the intention of causing his own death, and thereafter dies, a will made by him after the commission of the said act, is not valid in law (§ 39).

3. *Bequests to Heirs.* Bequests to heirs do not take effect, except with the consent of all the other heirs (§§ 19–21).[1] Such consent may be obtained in the lifetime of the testator, and once it is given, it cannot be revoked after his death. For instance, where a man bequeaths to a greater extent than allowed by law—that is, more than a third of his estate and/or to his heirs—and the heirs agree to this course in the testator's lifetime, they are not entitled, after his death, to reopen the question and go back upon the arrangement (§ 34).[2] A gift to an heir made in *Marḍu'l-maut*[3] is declared to be invalid (§ 21).

4. *Absent Heirs.* Where a testator dies leaving heirs who are absent, the executor shall refer the matter to the *qāḍī*, and the *qāḍī* must protect the shares of the absent heirs by the appointment of agents (or receivers). The executor cannot retain possession of the property of the heirs without the order of the *qāḍī* (§ 44).

5. Marḍu'l-maut (*Death-illness*). *Marḍu'l-maut* is mentioned only twice, and that too, incidentally. It is stated, firstly, that a donor cannot, during death-illness, make a gift (*hiba* or *'aṭīya*) to an heir (§ 21). But it is to be observed that nothing is mentioned about gifts in *Marḍu'l-maut* made to persons other

[1] In this respect the Western Ismā'īlīs agree with the Sunnites and the Zaidīs, and differ from the Ithnā 'Asharīs. See footnotes to §§ 19–21.

[2] This is in accord, curiously enough, not with Sunnite, but with Ithnā 'Asharī Law. Wilson, *Anglo-Mdn. Law*, 6th ed., §§ 270 and 476; Fitzgerald, *Mdn. Law*, 168-169.

[3] The *Marz-ul-maut* of Indian Law.

than heirs. Secondly, it is laid down, that debts acknowledged in death-illness must be paid in full (see *Debts*, below).

6. *Debts.* Debts must be paid out of the deceased's property before legacies (§ 23); and a man during death-illness may acknowledge his indebtedness to any person, and if this is a *bona fide* admission, the debt must be paid fully (§ 22). Unpaid dower is considered a debt; and ranking with other debts, it abates rateably if the assets are not sufficient to pay off all the debts (§ 24).

7. *Legatees.* In order to complete the bequest, a legatee must accept the legacy; and a legatee has the option to refuse a legacy (§ 30). If the legatee dies *before* the testator, the legacy is void, and reverts to the estate of the testator. If however the legatee dies *after* the testator, and after having accepted the legacy, the legacy goes to his own heirs. But if, on the other hand, the legatee dies without having accepted the legacy, here also the legacy reverts to the estate of the testator and shall be divided among his heirs according to the rules of Inheritance and Succession (§ 25).

8. *Executors* (awṣiyā', *sing.* waṣī). Executors must strictly follow the wishes of the testator: they must not, for instance, utilize the money bequeathed for the manumission of slaves where the performance of pilgrimage is what the testator desired (§ 28). Where a testator dies indebted, the executor is not entitled in administering the estate, to take possession of the moneys due to the creditors of the deceased, without their express consent (§ 38). Nothing save dishonesty, loss of reason, apostasy, 'prodigality'[1] and 'abandoning the *sunna*' can deprive an executor of his executorship (§ 41). And 'the Sultan is the executor of him who has no executor, and the guardian of him who has no guardian' (§ 41). In other words, in cases where the right of appointing a *waṣī* has not been

[1] This 'prodigality' is a difficult term to explain. In view of the context, it seems that this quality refers to the actions of the *waṣī* with regard to his own property.

exercised by a deceased person, the state must guard the interests of his creditors, legatees and heirs.

An executor is not entitled to carry on trade with the property of the testator's infant children, unless expressly authorized to do so (§ 42). If an executor carries on trade without such express authorization and loss occurs, the executor has to bear it; if, on the other hand, profit accrues, the minor children are entitled to it. Where however the testator expressly allows the executor to share profits, the executor is entitled to his share of the profits (§§ 42, 43).

9. *Slaves.* The manumission of slaves is commendable (§ 29). Slaves are not entitled to legacies (§ 33), except under certain specified circumstances (§§ 31, 37). Slaves may be manumitted by instalments (§ 32).

10. *Inheritance and Maintenance.* Where a man sends maintenance moneys to his family and thereafter dies, the residue, left over after paying for such maintenance till the day of his death, is available for payment of legacies, and for distribution amongst his heirs (§ 40).

11. *Rule of Construction.* The term *juz'*, in law, means the tenth part, and the term *sahm*, the sixth part of the testator's property (§§ 17-18).[1]

[1] This is a curious example of the construction put by lawyers, on words which in themselves have an indefinite meaning, namely 'part' or 'portion'.

بسم الله الرحمن الرحيم

كِتَابُ ٱلْوَصَايَا[1]

من الجلد الثانى من كتاب دعائم الاسلام لسيدنا القاضى النعمان بن محمد قس

ذكر الأمر بالوصية و ما يوصى به

§§ 1-2

[١] [f. 174b, l. 8] قال الله تع: كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ ٱلْمَوْتُ إِنْ تَرَكَ خَيْرًا [ن][2] ٱلْوَصِيَّةُ لِلْوَالِدَيْنِ وَٱلْأَقْرَبِينَ بِٱلْمَعْرُوفِ[3] حَقًّا عَلَى ٱلْمُتَّقِينَ[4] و قال عز و جل: يَا أَيُّهَا ٱلَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ ٱلْمَوْتُ حِينَ ٱلْوَصِيَّةِ ٱثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ،[5]

[٢][6] وَرُوِّينَا عن جعفر بن محمد ع م عن ابيه عن آبائه عن علىٍّ ع م أَنَّ رسول الله صلى الله عليه و آله قال: ليس[7] ينبغى للمسلم أَنْ يَبِيتَ ليلتَيْنِ إِلَّا وَصِيَّتُهُ[8] مكتوبةٌ[9] عند رَأْسِهِ،

1 *C* الوصايا.
2 This extra ن occurs in all MSS., cf. §§ 10 and 19.
3 Cf. §§ 19-20.
4 2, 176.
5 5, 105. For explanation of من غيركم see *Mus.* ii. 521_{26} *et seq.*
6 Cf. *Was.* ii. 667, Bāb 20; *Mus.* ii. 517, Waṣāyā, Bāb 1.
7 *A* omits قال ليس.
8 *B* and *C* الا و وصيته as in Bukhārī, *Ṣaḥīḥ* (Cairo, 1345) iv. 3_7. *A*, *D* الا وصية.
9 *D* مكتوبٌ.

[٣][1] و عن ابى جعفر محمد بن علىّ انه قال: الوصيّة حقّ على كُلّ مسلم،

[٤][2] و عن جعفر بن محمد ع م انه قيل له إنّ أُعَيْنَ[3] مولاك لما [175 a] ٱحْتُضِرَ ٱشْتَدَّ نِزَاعُهُ[4] ثم أَفاقَ حتى ظننا انه قد استراحَ ثم مات بعد ذلك، فقال عليه السلام: [5] تلك راحةُ الموتِ، أَمَا انّه ما من ميتٍ[6] يموت حتى يردّ الله عليه من عقله و سمعه و بصرِه، و عَدَّدَ أَشياء للوصية أَخَذَ أَوْ ترك،

[٥][7] و عن رسول الله صلع انه قال: من لم يُحْسِن وصيته[8] عند الموت كان ذلك نَقْصًا فى مُرُوَّتِه و عقله، قالوا يا رسول الله و [9] كيف يوصِى الميتُ[10] قال: اذا حضرته الوفاةُ و اجتمعَ اليه الناس، قال: اللّٰهم فاطرَ السموات و الارض عالم الغيب و الشهادة الرحمن الرحيم، إنّى عاهدتُ[11] اليك فى دارِ الدنيا، انى اشهد

1 § 2 and § 3, cf. *Was.* ii. 661, Bāb 1; *Mus.* ii. 518_2.

2 Cf. *Was.* ii. 661, Bāb 4, 1st and 2nd traditions; *Mus.* ii. 518_{33}.

3 *B* عبد. اعين is written, cancelled and عبد written above it. *D* أُعَيْن.

4 *Mus.* نزعه. 5 So in *C*. 6 *B* مومن.

7 Cf. *Was.* ii. 661, Bāb 3; 662, Bāb 4; *Mus.* ii. 518_{17-24} and 519_7.

8 *A* وصية. 9 *A* and *B* omit و. 10 الميت omitted in *B*.

11 *A*, *Mus.* عاهد; *B* عهد; *C*, *D* عَاهدتُ. May also be read عَاهدُ.

§§ 5-6 ان لا اله الّا انت وحدک لا شريک لک [1] و ان محمدا عبدک و رسولک، و أنّ الجنة حَقٌّ و النار حق و البعث حق و الحساب حق و القدر حق و الميزان حق و ان الدين كما وَ صَفْتَ [2] والاسلام كما شرعتَ و القول كما حَدَّثْتَ و ان [3] القران كما أَنْزَلْتَ، و انک انت الله الحق المبين، جزى [4] الله عنا محمدًا افضلَ [5] الجزاء وَ حَيَّا [6] الله محمدا بالسلام، اللهم يا عُدَّتى عند كُرْبَتى و يا صاحبى عند [7] شدّتى و يا وَلِىَّ نِعمَتى، [8] الٰهى و اله اٰبائى لا تَكِلْنِى الى نفسى طَرْفَةَ عين فانک إنْ تكلنى الى نفسى [175 b] أَقْتَرِبْ من الشر و أَتَبَاعَدْ من الخير، و اٰنِسْ في القبر وحشتى وَٱجْعَلْ لى عندک عهدًا يومَ القاک، ثم يُوصِى بحاجته، فهذا عَهْدُ ٱلمَيِّتِ و الوصيةُ حقٌّ على كلّ مسلم،

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[٦] [9] و قال علىّ ع م: عَلَّمَنى رسول الله صلعم هذه الوصيةَ و قال لى: عَلَّمَنيها جبرئيلُ،

1 *B* لا شولک.

2 *B*, *C* و الدين حق كما وصفت. *A* and *D* omit حَقٌّ.

3 *C*, *D* و القران كما انزلت.

4 *B*, *Mus.* جزى; *A*, *C* جزا.

5 *Mus.* خير.

6 *B* احيى.

7 *Mus.* gives فى as variant.

8 *A* يا ولى عند نعمتى; *B* و يا والى بنعمتى; text as in *C*.

9 Cf. last lines of *Was.* ii. 661, Bāb 3; *Mus.* ii. 518$_{23-24}$.

§ 7 [٧][1] و عن علىّ ع م انه قال: ينبغى لمن أَحَسَّ[2] بالموت أن يُعيدَ[3] عهده و يُجدِّدَ وصيَّتَهُ، قيل و كيف يوصى يا امير المومنين، قال: يقول: بسم الله الرحمن الرحيم، شهادةٌ[4] من اللّٰه، شَهِدَ بها[5] فلان بن فلان: شَهِدَ ٱللّٰهُ أَنَّهُ لَا إِلٰهَ إِلَّا هُوَ وَ ٱلْمَلَائِكَةُ وَ أُولُو ٱلْعِلْمِ قَائِمًا بِالْقِسْطِ لَا إِلٰهَ إِلَّا هُوَ ٱلْعَزِيزُ ٱلْحَكِيمُ،[6] اللهم من عِنْدِك[7] و إِلَيْك و فى قبضتك[8] و مُنْتَهَى قدرتك يداك مبسوطتانِ تُنفِق كيف تشاء[9] و انت اللطيف الخبير،[10] بسم الله الرحمن الرحيم، هذا ما أَوْصَى به فلان بن فلان أَوْصَى انه يشهد ان لا اله الا هو وحده لا شريك له و ان محمدًا عبده و رسوله ارسله بالهدى و دينِ الحق[11] لِيُنْذِرَ مَنْ[12] كَانَ حَيًّا وَيَحِقَّ ٱلْقَوْلُ عَلَى ٱلْكَافِرِينَ،[13] اللهم إنى أُشهِدُك و كفى بك شهيدا و أُشْهِدُ حَمَلَةَ عرشك و اهلَ سمواتك و ارضك[14] و من ذَرَأْتَ و بَرَأْتَ و فَطَرْتَ و أَنْبَتَّ و أَجْرَيْتَ[15]

1 *Mus.* ii. 518$_{24}$–$_{33}$.
2 *B, C* احس ; *A* احسن.
3 *A, B, Mus.* بعهد. Text as in *C*.
4 *D* اشهدُ شهادةً.
5 *D* omits بها.
6 3, 16.
7 *A* من عند.
8 *A* omits فى.
9 *C* بنفوذ كيفَ بشاءُ.
10 *A* الخبر.
11 *Mus.* adds كله ليظهره على الدين.
12 *B* ما.
13 36, 70.
14 *B, D* و اهل ارضك ; *C* و سُكّان سمواتك و اهل ارضك.
15 *A* and *D* omit انبت.

§§ 7-8 بانک انت اللّٰه [1] لا اله الا انت وحدک لا شریک [176a] لک ،
و ان محمدا عبدک و رسولک ، و ان الساعة آتِيَةٌ لا ریب فیها
و ان الله یبعث مَن فی القبور ، و ان الجنة حق والنار حق ، أَقُول
قولی هذا مع من یقوله و أَكْفِيهِ من أَبَى ، و لا حول [2] و لا قوة الا بالله
العلیّ العظیم ، اللهم مَن شهد بما شهدتُ به فاكتُبْ شهادته مع
شهادتی و من أَبَى فاكتب شهادتی مكان شهادته و اجعل لی بها
عندک عهدا تُوَفِّينِيهِ [3] یوم القاک فردًا ، إِنَّک لا تُخْلِفُ المیعادَ ،
ثم يُفْرَشُ فراشُه مما يَلِي ٱلقبلةَ ثم یقول : علی ملة رسول الله حنیفًا
مسلمًا و ما انا من المشركین ، و يُوصِي كما امر رسول الله صلع ،

[٨] و عن جعفر بن محمد ع م انه قال : كان فی وصیة
رسول الله لِعَلِيٍّ ، یا علیّ أُوصیک فی نفسک بخصال فٱحْفَظْها ، ثم
قال : اللهم أَعِنْه ، [4] اما الأولى [5] فالصدق لا تُخرِجَنَّ [6] مِن فیک
كَذْبَةً ابدا ، و الثانیة الورع لا تَجْتَرِئْ علی خیانة ابدًا ، و الثالثة
الخوف من الله حتی كأنّک تراه ، و الرابعة كثرة البكاء لله يُبْنَى

[1] *Mus.* adds الذی. [2] *A* قول.
[3] *B* drops this word ; *C* توفینه. May also be read تُوَفِّينِيهِ.
[4] *B* عنه. [5] *A, D* الاول. [6] *B* تخرج.

§§ 8-9 لک بکل دَمْعَةٍ الفُ بيت فی الجنة، و الخامسة بَذْلُکَ مَالَکَ و دَمَک دون دينک، و السادسة الأَخذُ بسنتی فی صلوٰتی و صيامی و صدقتی، [176b] اما الصلوة فالاحدی و الخمسون ركعة، و اما الصيام فثلثة ايام، فی كل شهر خميس فی اوله، و اربعاء فی وسطه، و خميس فی آخره، و اما الصدقةُ فجُهدَک حتی يقال قد اسرفتَ و لم تُسْرِفْ، و عليک بصلوٰة الليل و عليک بصلوٰة الليل و عليک بصلوٰة الليل، و عليک بصلوٰة الزوال و عليک بصلوٰة الزوال و عليک بصلوٰة الزوال،[1] و عليک بتلاوة القرآن و عليک بتلاوة القرآن على كل حال، و عليک برفع يديک فی صلوٰتک، و عليک بالسِّوَاک عند كل وُضوءٍ، وَ عليک بمحاسن الأَخلاق فَارْكَبْهَا و مَساوِی الاخلاق فَاجْتَنِبْها و إِن لم تفعل فلا تَلُمْ[2] الا نفسک،

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[٩][3] و عن علیّ بن الحسين و محمد بن علیّ صلوات الله عليهما انهما[4] ذَكَرَا وصيةَ علیّ صلوات الله عليه فقالا: أَوصَى الى ابنه الحسنِ و اشهد علَى وصيتِهِ الحسينَ[5] و محمداً[6] و جميعَ وُلْدِهِ

[1] *B* recommends the *zawāl* prayer only twice; *C*, *D* عليک بصلوة الزوال ثلث مرّات.

[2] *A* نلم ; *D* فلم تلم.

[3] *'Uyūn*, iii. folio 327 *et seq.*

[4] *C* adds here قالا.

[5] *C* اشهد على وصيه حسيناً. *D* وصية حسيناً.

[6] *B* محمد. *A*, *C*, *D* محمدا (ibn al-Ḥanafiya).

§ 9 (*contd.*) و رُؤساءَ شيعتِهِ و اهل [1] بيته، ثم دَفَع الكتبَ [2] اليه و السلاح ثم قال له: امرنى رسول الله أَنْ أُوصِىَ [3] اليک و أَنْ أَدْفَعَ اليک كتبى و سلاحى كما أَوصَى إِلَىَّ رسولُ الله و [4] دَفَع إِلَىَّ [5] كتبَه و سلاحَه و أَمَرَنى أَنْ آمُرَک [6] اذا حضرک الموتُ ان تدفع ذلک الى اخيک الحسين، [177 *a*] ثم اقبل على الحسين فقال [7] و امرک رسول الله ان تدفعه [8] الى ابنک هذا، ثم اخذ بيد ابنه علىّ ابن الحسين فَضَمَّه اليه ثم قال له: يا بُنَىَّ و امرک رسول الله ان تدفعه الى ابنک محمد وَأَقْرَاءَه [9] من رسول الله و منى السلامَ، ثم اقبل على ابنه الحسن فقال له: يا بُنَىَّ انت ولىّ الامر و ولى الدم فإِنْ عَفَوْتَ فلک و إِن [10] قتلتَ فضربةٌ مكانَ ضربةٍ، و لا تَأْثَمُ، [11] و كان قبل ذلک قد خَصَّ [12] الحسنَ و الحسينَ بوصية أَسَرَّها اليهما [13] كَتَبَ لهما فيها اسماءَ الملوک [14] و مدةَ الدنيا و اسماءَ الدعاة

1 *D* فاهل.
2 *B* كتاب.
3 *C* أُواصى.
4 *C* adds here و على الأَئمة من ذريته.
5 *B* اليه.
6 *B*, *C* امرک.
7 *C* ثم قال; *A* امرک; *D* قال.
8 *C*, *D* تدفع; *A* تدفعه.
9 *B* و اقرءه; *C* فاقرائه; *D* فاقراءه. I have adopted the spelling usual in Ismā'īlī MSS.
10 *C* فان.
11 *A* تأثم and adds a scholium in margin: يعنى لا تبطئ من اَثِم. *B*, *C*, *D* تاثم.
12 *B* حض.
13 *A* adds و.
14 *D* adds فى هذا الدنيا.

§9 (*contd.*) الى يوم القيٰمة، و دفع اليهما[1] كتابَ القرآن و كتابَ العلم، ثم لَمَّا جمع الناس قال لهما[2] ما قال، ثم كَتَب كتابَ وصيتِهِ و هو —

بسم الله الرحمن الرحيم، هذا ما اوصى به عبد الله علىّ ابن ابى طالب لآخر ايامه من الدنيا و هو صائرٌ الى بَرْزَخ المَوتى و الرحيلِ عن الاهلِ[3] و ٱلْأَخِلَّاءِ، و هو يشهد ان لا اله الا الله[4] وحده لا شريك له و ان محمدا عبده و رسوله و امينُه صلوات الله عليه * و على اخوانه المرسلين و[5] ذريته الطيبين،[6] و جزى الله[7] محمدا عنا افضلَ [177 *b*] ما جزى به نبيا[8] عن امته، و[9] اوصيك يا حسن و جميعَ من حضرنى من اهل بيتى و وُلْدى و شيعتى بتقوى الله وَ لَا تَمُوتُنَّ إِلَّا وَ أَنْتُمْ مُسْلِمُونَ، وَ ٱعْتَصِمُوا بِحَبْلِ ٱللهِ جَمِيعًا وَ لَا تَفَرَّقُوا[10] فإنى سمعتُ رسول الله يقول: صلاحُ ذاتِ البَيْن افضلُ من عَامَّة الصلوة و الصوم، و اوصيكم بالعمل قبل ان يوخذ منكم بالكَظْم و باغتنام الصحة قبل السقم و قبل أَنْ تَقُولَ[11] نَفْسٌ يَا حَسْرَتٰى[12] عَلٰى مَا

1 *B* البهم. 2 *D* البهما.
3 *B* adds in margin: و لا ولد عنه; *D* و الولد. 4 *A* adds هو.
5 *C* omits these words and has و على الأئمة من.
6 *B* adds الطاهرين. 7 *C, D* و جزاه الله عنا.
8 *B* ما جرى نبياً; *C, D* ما جزا نبياً; *A* جزى به.
9 *A* omits هو. 10 3, 97-98.
11 *A* نقول 12 *B* حسرتاه; *D* حسرتا.

§ 9 (*contd.*) فَرَّطْتُ فِى جَنْبِ ٱللهِ وَ إِنْ كُنْتُ لَمِنَ ٱلسَّاخِرِينَ، أَوْ تَقُولَ [1] لَوْ أَنَّ ٱللهَ هَدَانِى لَكُنْتُ مِنَ ٱلْمُتَّقِينَ، [2] وَ أَنَّى [3] و مِنْ أَيْنَ و قد كنت لِلْهَوَى متبعا، فيُكشَف له عن بصره و تُهتَك [4] له حُجُبُه لقول [5] الله تعالى: فَكَشَفْنَا عَنْكَ غِطَاءَكَ فَبَصَرُكَ ٱلْيَوْمَ حَدِيدٌ، [6] أَنَّى له البصر [7] أَلَا ما [8] أَبْصر قبل هذا الوقت ٱلضَّرَرَ قبل ان تُحجَب التوبةُ بنزول الكربة فَتَتَمَنَّى [9] النفس أَنْ لو رُدَّتْ [10] لَتعمَل بتقواها [11] فلا ينفعُها المُنَى، و اوصيكم بمُجَانَبة الهَوَى فإِنَّ الهوى يدعو الى العَمَى و هو الضلال فى ٱلآخرة و الدنيا، و اوصيكم بالنصيحة لِلّٰه عز و جل و كيف لا تنصَحُ لمن أَخْرَجَك [12] من أَصْلَاب اهل الشرك و أَنْقَذَك من جُحود اهل الشك [13] فَٱعْبُدْهُ رغبةً و رَهْبَةً و ما ذلك عنده [178 *a*] بضَائِعٍ و اوصيكم بالنصيحة [14] للرسول الهادى محمد صلعم و مِنَ النصيحة له أَن تُؤَدُّوا اليه أَجرَه، قال الله عج: قُلْ لَا أَسْأَلُكُمْ عَلَيْهِ أَجْرًا إِلَّا ٱلْمَوَدَّةَ فِى [15] ٱلْقُرْبَى، [16] و مَن [17] وَفَّى [18] محمدًا اجره

1 *B* بقول.
2 **39**, 57-58.
3 *B* omits و; *C* و انا.
4 *B* بهتك.
5 *D* لقول; *A*, *B*, *C* بقول.
6 **50**, 21.
7 *B* بالبصر.
8 *A*, *D* omit ما.
9 *C* فتمنى; *D* فتتمنت.
10 *C* رددت
11 *A* بتقويها.
12 *A* اخرخك.
13 *D* الشرك.
14 *A* omits بالنصيحة.
15 *A* مودة فى.
16 **42**, 22.
17 *B* فمن.
18 *D* او فى.

§ 9 (*contd.*) بمودة[1] قرابته فقد أدّى الامانة، و من لم يؤدّها كان خصمه[2] و من كان هو خصمه[3] خصمه،[4] و من خصمه فقد باء بغضب من الله و مأواه[5] جهنّم[6] ط و بئس المصير،[7] ايها[8] الناس إنه لا يحب محمدٌ إلا لله[9] و لا يحب آل[10] محمد الا لمحمد[11] فمن شاء فليقلّ[12] و من شاء فليكثر، و اوصيكم بمحبتنا و الاحسان الى شيعتنا فمن لم يفعل فليس منا، و اوصيكم باصحاب محمد الذين لم يحدثوا حدثاً[13] و لم يؤووا[14] محدثاً و لم يمنعوا حقّاً، فان رسول الله صلع[15] قد اوصانا بهم و لعن المحدث منهم و من غيرهم، و اوصيكم بالطهارة التى لا تتمّ الصلوة الا بها، و بالصلوة التى هى عمود الدين و قوام الاسلام فلا تغفلوا عنها، و بالزكوة التى بها تتم الصلوة، و بصوم شهر رمضان، و حجّ البيت[16] من استطاع إليه سبيلاً[17]، و بالجهاد فى سبيل الله فانه ذروة الاعمال و

1 *B* لمودة. 2 *D* خصمه.

3 *B* omits هو. So in *A* and *C*. 4 *B* and *D* add الله.

5 *C* ماءيه.

6 *C* جهنم (*sic*) و من كان هو خصمه فقد باء بغضب من الله ماءيه.

7 3, 156. 8 *C*, *D* ياءيها. 9 *B* الا الله. *Sic* in *A* and *C*.

10 *C* آل ; *B* الى ; *D* الا. 11 *B* adds عليه و على اله السلام.

12 *A* فليقلل ; *B*, *D* فليقال. 13 *D* بحدثوا.

14 *Sic* in *A* and *C* ; *B* يؤوا ; *D* يوءووا.

15 *C* و على آله و على الائمة من ذريته.

16 *B* بيت الله الحرام ; *A*, *C*, *D* البيت الحرام. 17 3, 91.

§ 9 (*contd.*) عز الدين و الاسلام، و الصوم [178 *b*] فانه جُنَّة من النار، و عليكم بالمحافظة على اوقات الصلوة فليس منى من ضَيَّع الصلوٰة، و اوصيكم بصلوة الزَّوال فانها صلوة الأوّابين، و اوصيكم باربع ركعات بعد صلوة المغرب، فلا تتركوهن و إن خفتم عُدُوًّا، و اوصيكم بقيام الليل * و اوصيكم بقيام الليل و اوصيكم بقيام الليل [1] من اول الليل [2] الى أخره [3] فان غلبكم النوم ففى أخره و مَن [4] مُنِع بمرضٍ فان الله [5] يعذره بالعذر [6] و ليس منى و لا من شيعتى من ضيّع الوتر * او مَطَلَ بركعتَيِ الفجر، [7] و لا يَرِدُ على رسول الله مَن اكل مالا حراما لاوالله لاوالله لاوالله، ولا يَشْرَب من حوضه و لا يَنَال شفاعتَه، [8] لا و الله، [9] و لا من أَدْمَنَ على [10] شرب شىءٍ من هذه الاشربة المُسْكِرة، و لا من زنى [11] بمُحْصَنة، لاوالله، و لا من لم يَعْرِف حقّى و لا حق اهل بيتى و هى اوجَبُهن، لاوالله، و لا يرد عليه مَنِ اتَّبَع هواه و لا من شَبِع

1 The repetition exists only in *C*. *D* repeats once only. *A* adds here الى أخره. From here on there is some confusion in *A* and corrections are incorporated in the margin.

2 *C* من اوله.

3 *B* and *D* have من زوال الليل الى آخره. *A* also has this in the text, but corrects it in the margin as above.

4 *B* فمن.

5 *A* فان بعذر.

6 *C* من العذر.

7 *C* و ركعتى الفجر.

8 *A* تناله شفاعة; *C* ينال شفاعته.

9 *C* adds لا و الله once more.

10 *B* ادمن شيأً من.

11 *A*, *D* زنا; *C* زنى.

§ 9 (*contd.*) و جارُه المؤمن جائعٌ، و لا يرد عليه من لم يكن قَوّاما لِلّه بالقسط، إِنَّ رسول الله ص عَهِد إِلَيَّ و قال:[1] يا علىّ مُرْ بِٱلْمَعْرُوفِ[2] وَ ٱنْهَ عَنِ ٱلْمُنْكَرِ[3] بيدك، فإِن لم تَستَطِع فبلسانك، فان لم [179 *a*] تستطع فبقلبك، و إِلّا فلا تَلُومَنَّ إِلّا نفسك، و إِيّاكم و الغيبة فانها تُحبِط العمل،[4] صِلُوا ٱلْأَرحام وَ ٱفشُوا السلام * و أَطْعِمُوا الطعام[5] و صَلُّوا و الناس نيام، و اوصيكم يا بنى عبد المطلب خاصَّةً أن يتبيَّن فضلكم على من احسن اليكم و تصديق[6] رجاءِ مَن أَمَلَكم فإِنّ ذلك[7] اشبه بانسابكم، و اياكم و البِغضَةَ لذوى أَرحامكم[8] المؤمنين، فانها الحالقة للدين،[9] و[10] عليكم بمُداراة[11] الناس فانها صدقة، و أَكْثِرُوا من قول لا حول و لا قوة الا بالله العلىّ العظيم و عَلِّموها اطفالكم،[12] و أَسْرِعوا بختانِ[13] اولادكم فانّه[14] اطهر لهم[15]، و لا تُخْرِجُنَّ من افواهكم[16] كذبةً ما بقيتم، و لا تتكلموا[17]

1 *C* فقال لى.
2 *B* (*sic*) بالمعروفا.
3 31, 16.
4 *A*, *D* الاعمال.
5 *C* and other ancient MSS. omit this. Probably an interpolation.
6 *C* بصديقُ; *D* و عليكم بتصديق.
7 *C* ذلّكم.
8 *C* ذوى ارحامكم.
9 *C* لدين اللّه.
10 *B* drops و.
11 *A* بمدارة.
12 *B*, *C* اولادكم.
13 *D* ختان.
14 *A* فانها.
15 So *B* and *C*; *A*, *D* لكم.
16 *B* الواهكم.
17 *C* نكلّموا.

§ 9 (*contd.*) بالفُحْش فانه [1] لا يَليق بنا و لا بشيعتنا و إنّ [2] الفاحش لا يكون صديقا و ان المتكبر ملعون و المتواضع عند الله مرفوع، و اياكم و الكبر فانه رِدَاءُ اللهِ تعالى فمن نازعه رِدَاءَهُ قَصَمه، [3] وَٱللّٰهَ ٱللّٰهَ [4] فى ٱلْأَيتَام فلا تجوعُنّ بحضرتكم، والله الله فى ابن السبيل فلا يَستَوْحِشَنّ [5] من عشيرته [6] بمكانكم، و الله الله فى الضَّيف لا يَنْصَرِفَنّ إلّا شاكرا لكم، والله الله فى الجهاد للأنفس فانها اعدى العدو [7] لكم، فانه [8] تبارك و تعالى قال: [9] إِنَّ ٱلنَّفْسَ لَأَمَّارَةٌ بِٱلسُّوءِ * إِلَّا مَا [179b] رَحِمَ رَبِّى [10] و إنّ اول المعاصى تصديقُ النفس و الرُّكُون الى الهوى، والله الله لا ترغبوا فى الدنيا فان الدنيا هى رأس الخطايا وَهَى مِن بَعْدُ الى زوال، و اياكم و الحسدَ فانه [11] اول ذنب كان من الجن قبل الانس، [12] و اياكم و تصديقَ النساء فانهن أَخْرَجْنَ أباكم من الجنة و صَيَّرْنَه الى نُصْب الدنيا، و اياكم و سوءَ الظن فانه يُحْبِط العمل وَ ٱتَّقُوا ٱللّٰهَ وَ قُولُوا قَوْلاً سَدِيداً، [13] يُصْلِحْ لكم اعمالكم

1 *B, C* فان الفحش. 2 *C* فان. 3 *D* قاصمه.

4 *A, B, D* الله الله و for وَ (ٱتَّقُوا) اللّٰهَ (ٱتَّقُوا) اللّٰهَ; *C* والله والله و.

5 *C* not legible. 6 *C* عشرتكم.

7 *A* اعدا لعدو; *D* و هى اعداء العدو.

8 *C* انه و. 9 *B, C* يقول.

10 *B* and *C* omit الا ما رحم ربى. 12, 53.

11 *C* فانها. 12 *D* و الانس. 13 33, 70.

§ 9 (*contd.*) و يغفر لكم [1] ذنوبكم، و عليكم بطاعة مَن لا تُعْذَرون فى ترك [2] طاعته، و عليكم بطاعتنا [3] اهلِ البيت فقد قَرَن اللهُ طَاعتَنا [4] بطاعته و طاعة رسوله، و نظم ذلك فى آية من كتابه [5] مَنًّا من الله علينا و عليكم، و اوجب [6] طاعتَه و طاعة رسوله و طاعة اولى [7] الامرِ من اهل بيت [8] رسوله، و امركم ان تسألوا اهل الذكر و نحن واللهِ اهل الذكر، لا يدَّعى ذلك غيرنا إلّا كاذبٌ، يُصَدِّق [9] ذلك قوله عزوجل: قَدْ أَنْزَلَ ٱللَّهُ إِلَيْكُمْ ذِكْرًا رَسُولًا يَتْلُو عَلَيْكُمْ آيَاتِ ٱللَّهِ مُبَيِّنَاتٍ [10] لِيُخْرِجَ ٱلَّذِينَ آمَنُوا وَ عَمِلُوا ٱلصَّالِحَاتِ مِنَ ٱلظُّلُمَاتِ إِلَى ٱلنُّورِ، [11] ثم قال [12]: فَٱسْئَلُوا أَهْلَ ٱلذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ، [13] * فنحن و الله اهل [180a] الذكر، [14] فَٱقْبَلُوا امرنا و * ٱنْتَهُوا عما نهَينا [15] فانما نحن الابواب التى أُمرتم بِأَنْ تَأْتُوا ٱلْبُيُوتَ [16] مِنْ أَبْوَابِهَا، [17] فنحن والله ابواب تلك البيوت، ليس ذلك لغيرنا و لا يقوله احد [18] سوانا،

1 *B* omits لكم; *C* يغفرلكم.
2 *B* بترك.
3 *A* عليكم طاعتنا; *B* و بطاعتنا; *C* طاعتنا; *D* و طاعتنا.
4 *B* طاعتهم.
5 *B* من القرآن.
6 So in *B*. *A* اوجب; *D* فاوجب.
7 *D* ولاة.
8 *C* and *D* اهل البيت without رسوله, etc.
9 *C*, *D* تصديقُ ذلك فى.
10 *A* بينات.
11 65, 11.
12 *D* قال الله تعالى.
13 16, 45.
14 *C* فنحن اهل الذكر.
15 *A* نهيا; *B*, *D* الى نَهْيِنا; *C* و انتهوا نهينا.
16 *A* تابو البيوت; *B* توتو البيوت; *C* تاتو البيوت.
17 *A*, *D* منها. 2, 185.
18 *C* omits احد.

§ 9 (*contd.*) ايها الناس هل فيكم احد يَدَّعى قِبَلى جورًا فى حكم او ظلما فى نفس او مال فَلْيَقُمْ أَنْصِفْهُ من ذلك، فقام رجل من القوم فَأَثْنَى عليه ثناءً حسنًا[1] و أَطْرَاه و ذكر مَناقِبَه فى كلام طويل[2] فقال علىّ ع م: ايها العبد المتكلم ليس هذا حينَ إِطْرَاءٍ و ما أُحِب أَن يحضرَنى احد فى هذا المحضر بغير النصيحة و الله الشاهد على من رأى شيئًا يَكْرَهُهُ فلم يُعَلِّمْنِيهِ فانى احب أَنْ أَسْتَعْتِبَ[3] من نفسى قبل ان تَفُوتَ نفسى،[4] اللهم انك شهيد و كفى بك شهيدًا إِنى بايعتُ[5] رسولك و حجتك فى ارضك محمدًا أنا و ثلثة من اهل بيتى علَى أَنْ لا نَدَعُ لِلّه[6] امرًا إِلّا * عملناه، و لا ندع[7] له نهيًا إِلّا رفضناه، و لا وليًّا إِلّا احببناه، و لا عدوًّا الا عاديناه، * و لا نُوَلّى ظهورَنا عَدُوًّا[8] و لا نَمَلُّ من[9] فريضةٍ، و لا نزداد[10] لِلّه و لرسوله إِلّا نصيحةً، فقُتِل اصحابى رحمة الله عليهم و رضوانه و كلهم من اهل بيتى، عُبَيْدَةُ بن الحارث رحمة الله عليه [180 *b*] قُتِل ببدرٍ شهيدًا، و عمّى حمزة قتل يومَ أُحُد شهيدًا رحمة الله عليه، و أخى جعفر قتل يوم مُؤتَةَ

1 *B*, *C* فاثنى ثناء حسنا عليه. 2 *B* كلام طويلا.
3 *C* استعتبت 4 *A* تفوتنى. 5 *A* بايعته.
6 *A*, *D* ندع اللّه; *B* ندع لله; *C* تدع لله.
7 *B* علمنا به و لا تدع له نهيا; *C* عملنا به و لا ندع نهيا; *D* عملناه.
8 *A* omits و لا تولى ظهورنا عدواً; *C* عدواً.
9 *C* تمل عن. 10 *C* تزداد.

§9 (*contd.*) شهيدًا رحمة الله عليه، فأنزل الله فيَّ و فِي اصحابى: مِنَ ٱلْمُؤْمِنِينَ رِجَالٌ صَدَقُوا مَا عَاهَدُوا ٱللَّهَ[1] عَلَيْهِ فَمِنْهُمْ[2] مَن قَضَى نَحْبَهُ[3] وَ مِنْهُمْ مَنْ يَنْتَظِرُ وَ مَا بَدَّلُوا تَبْدِيلًا[4]، أنا و الله المنتظر[5] و ما بدّلتُ تبديلا، ثم وعدنا بفضله الجزاء فقال: قُلْ بِفَضْلِ ٱللَّهِ وَ بِرَحْمَتِهِ فَبِذَٰلِكَ فَلْيَفْرَحُوا هُوَ خَيْرٌ مِمَّا يَجْمَعُونَ،[6] و قد آنَ[7] لى فيما نزل بى أنْ افرح بنعمة ربى، فأثنَوا عليه خيرًا و بَكَوْا فقال: ايها الناس انى أُحبُّ أنْ أُشهِدَ عليكم أن لا يقوم احد فيقول اردتُ ان اقولَ فخفّتُ،[8] فقد اعذرتُ بينى و بينكم،[9] اللهم ألاَ أنّ يكون احد يريد ظلمى و الدعوى قِبَلى[10] بمالم أجْنِ، أما إنّى لم أستَحِلَّ من احد مالاً، و لم استحل منْ احد دمًا بغيرِ حِلّه،[11] جاهدتُ مع رسول الله صلع بامر الله و امر رسوله فلما قَبَض اللهُ رسولَه جاهدتُ مَنْ أمَرنى بجهاده من اهل ٱلْبَغْىِ و سَمّاهم لى رجلاً رجلاً و حَضَّنى على جهادِهم، و قال: يا علىّ تُقَاتِل النَّاكثين و سمّاهم لى، و القاسطين و سمّاهم لى، و المارقين و سمّاهم لى، فلا تُكثِرْ[12] منكم الأقوالُ [181 *a*] فإنّ أصْدَقَ ما يكون

1 *B* عاهدوا لله. 2 *A* منهم.
3 *C* نحبه. 4 **33, 23.**
5 *C* انا هو المنتظر. 6 **10, 59.**
7 *B* أن ; *D* ان. 8 *B* فخففت.
9 Another MS. reads فيما بينى و بينكم. 10 *B, D* و الدعوى على دمالم.
11 *C, D* حله ; *A, B* حلة. 12 *D* تكثر.

§ 9 (*contd.*) المراء[1] عند هذه الحال، فقالوا خيرا وأثنوا بخير و بكوا، و قال للحسن:
يا حسن انت ولى دمى و هو عندك و قد صيّرته اليك، يعنى
ابن ملجم[2] لعنه الله،[3] ليس لأحد فيه حكم فإن أردتَ أن تقتلَ
فاقتلْ و إن أردتَ أن تعفو[4] فاعفُ، و انت الامام بعدى و وارث
علمى و افضل من أتركُ بعدى و خير خَلَفى[5] من اهل بيتى،
و اخوك ابن امك بشَرٌ كما[6] رسول الله بالبُشرَى فأبْشِرا بما بشّرَ كما،[7]
و اعملا لله بالطاعة و اشكراه على النعمة، ثم لم يزل يقول:
اللهم اكفِنا عدوك الرجيم[8]، اللهم انى أُشهِدك انك انت الله[9]
لا اله الا انت و انت[10] الواحد الصمد لم تَلِدْ و لم تُولَدْ و لم يكن
لك[11] كفوا احد[12] فلك الحمد على عَدَدِ نعمائك علىّ[13]
و احسانك عندى فاغفرلى و ارحمنى و انت أرحم الراحمين،[14] ثم
لم يزل يقول: لا اله الا الله وحده لا شريك له و اشهد ان محمدا عبده

[1] Ismā'īlī MSS. usually spell المراء and المراءة. I have retained their peculiar spelling.

[2] *A* ابن الملجم. [3] *B* لعنة الله عليه. [4] *B* اردت العفو.

[5] *A* و خيرا من خلف; *B* اخلف; *D* و خير من اخلف; text as in *C*.

[6] *C* كما بشّر عن رسول الله. [7] *B* adds به.

[8] *D* الشيطان الرجيم. [9] *C* omits انت الله.

[10] *C* و انك. [11] *A* يكن له; *C* تكن لك.

[12] *A* كفوا احد; *D* has this whole line as in the *Qur'ān*.

[13] *C*, *D* لدىّ.

[14] *A* (*sic*) خير الراحيم; *C* خير الراحمين

§9 (*contd.*) و رسوله ، عُدَّةٌ [1] لهذا ٱلْمَوْقِف و لما [2] بعده من المواقف ، اللهمَّ آجْزِ محمدًا عنا افضل الجزاء و بَلِّغْهُ عنا [3] افضلَ السلام ، اللهم أَلْحقنى به و لا تحُلّ بينى و بينه انك سميع الدعاء غفور رحيم ، [4] ثم [181 *b*] نظر الى اهل بيته فقال : حفظكم الله من اهل بيت و حفظ فيكم نبيّكم ، أَستَودِعكُم الله و أَقْرَاُ [5] عليكم السلام ، ثم لم يزل يقول : لا اله إلا الله [6] محمد رسول الله حتى قُبِض ، * صلواتُ الله عليه [7] و رحمته و رضوانه ليلةَ احدى و عشرين من شهر رمضان المعظمِ [8] سنةَ اربعين من الهجرة ، [9]

1 The reading عِدَّةٌ seems also possible.

2 *A*, *C* ما ; *B* لما.

3 *A*, *C* منا.

4 *A* غفور الرحيم ; *C* رؤف رحيم.

5 *B* اقرى.

6 *A* هو.

7 *B* omits phrase.

8 *B* omits adj.

9 *C* الجهرة, an obvious *lapsus calami*.

ذكر ما يجوز من الوصايا

و ما لا يجوز منها

§§ 10-11

[١٠] [1] رُوِينَا عن جعفر بن محمد عليه السلام عن ابيه عن اٰبائه [2] عن علىّ صلوات الله عليه [3] انه حَضَر [4] رجلا مُقِلًّا، [5] فقال له الرجل: أَلَا أُوصِى يا امير المؤمنين، قال: أَوْصِ بتقوى الله، فامّا المال فدَعْ مالك لورثتك، فانه [6] طَفِيفٌ [7] يَسِيرٌ و انما قال الله: إِنْ تَرَكَ خَيْرًا [8] و انت لم [9] تترك خيرا توصى فيه، [10]

[١١] [11] و عن [12] رسول الله صلع انه قال: المراء [13] أَحَقُّ بثلثه يَضَعُه حيث احبّ، قال علىّ للرجل أَنْ يوصِىَ فى ماله بالثلث وَالثلث كثيرٌ، [14]

1 Cf. *Mus.* ii. 528_{26}.
2 Omitted in *D*.
3 *B* adds و على الائمة من ولده.
4 *Mus.* حضره.
5 So vocalized in *A*. *B* مثقلا.
6 *C* فانها.
7 *A* طقبق.
8 2, 176. *D* adds الوصية [ن]. See § 1, above.
9 *D* فلم.
10 *D* توصى به.
11 Cf. *Mus.* ii. 520_{1-2}.
12 *C* و عنه عن.
13 See p. 45, note 1.
14 Cf. *Was.* ii. 662, Bāb 10 (9); *Taisīr*, iv. 292.

§§ 11*a*–13 [١١*a*] قال جعفر بن محمد ع م[1] كذلك المراءةُ لها مثلُ ذلك ،

[١٢][2] و عن علىّ ع م * انه قال : أَسْتَحِبُّ[3] ان يُقْتَصَر[4] فى الوصية على الخُمُس ، * و قال : إنّ الله عز و جل[5] رضى بالخمسُ من عباده ، و قال : الخمس اقتصادٌ و الثلث جُهْدٌ بالورثة ، و لأَنْ[6] يُوصَى بالربع احب الىَّ مِن أَنْ يُوصَى بالثلث ،[7]

[١٣] و قال جعفر بن محمد ع م : مَن [182 *a*] اوصى بالثلث لم يترك مالاً[8] و قد أَضَرَّ بالورثة ، و الوصية بالربع و الخُمس افضل من الوصية بالثلث ، فهذا هو استحباب مما ذكرناه عنه ، و الوصية بالثلث جائزة ، و اذا[9] كان الميراث كثيرا

1 *A* adds و ابو جعفر.

2 Cf. *Was.* ii. 662, Bāb 9; *Majmū'u'l-Fiqh*, § 913; *Mus.* ii. 519_{21}.

3 *B* احب انه ; *C* إِنَّهُ أَسْتَحَبَّ.

4 *C* بقصر.

5 *D* قال اللّٰه تعالى. Referring to 8, 42.

6 *C* vocalizes لَأَنْ.

7 *C* adds in margin here: و لا تصح الوصية الا بشاهدين عدلين فان ادعى رجل انه اوصى بوصيّة اخرجها و لم يكن معه شاهدان كان ما اخرجه متطوعا ١٢. This *riwāya* is to be found incorporated in the text in some MSS.

8 *B* مال ; *D* مالا كثيرا.

9 *A*, *D* ان ; *B*, *C* اذا.

§§ 13–15 والورثة [1] اغنياء فلا بأس باستغراق الثلث ، و إن كانوا فقراء فالاقتصار [2] على ما دونه كما جاء، ذلك افضل ، و لا تجوز الوصية باكثر من الثلث إلّا ان يُجيزَها [3] الورثةُ و يكونوا جائزى [4] الامر أوّ من يجوز أمرُهُ منهم [5] فى حصته ،

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[١٤] [6] و روينا عن جعفر بن محمد ع م [7] انه قال : من اوصى باكثر من الثلث أو اوصى بماله كله فانه لا يجوز و [8] يُردّ الى المعروف غير المنكر، فمن ظلم نفسه فى الوصية و حَافَ [9] فيها [10] * فانها تُردّ الى المعروف [11] و يُتْرَك [12] لاهل الميراث حقّهم ،

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[١٥] [13] و عن ابى جعفر و ابى عبد الله صلوات الله عليهما انهما قالا : من اوصى بوصايا ذَكر فيها العتقَ فانها تُخْرَج من ثلثه و يُبداء [14] بالعتق، و يكون ما فَضَل فى الوصايا ،

1 *C* الوارثة.
2 *B* اقتصاد.
3 *D* يجوزها.
4 After جائز *A* has a word which is not legible *B* and C جابز الامر ; *D* يكونون.
5 *C* امر كل واحد منهم.
6 Cf. *Was.* ii. 662, Bāb 8, *Mus.* ii. 519_{16} and 524_{31}.
7 *B* و عنه ع م ; *C* و عن على صلوات الله عليه.
8 *B* omits و.
9 *B*, *C* خاف ; *A*, *D* حاف ; *Mus.* has جار as a variant.
10 *C* بها.
11 Reading with *B* فانها ترد الى المعروف . The others have فانه يرد.
12 *B* ترد.
13 Cf. *Mus.* ii. 520_{13}; 527_{22}.
14 So in *A* ; *B* يبدء ; *D* يبدى.

§§ 16-17 [١٦] قال جعفر بن محمد : و كذلك إن اوصى بأن يُحَجَّ عنه و لم يكن حَجَّ فانه يُبْداء بالحج على سائر الوصايا ، [1]

[١٧] [2] و عن جعفر بن محمد صلوات الله عليه ان رجلا من اصحابه قال له : إنَّ امراءةً [3] عندنا اوصَتْ بثلثها و قالت : يُعْطَى * منه جزءٌ [4] [182 b] لفلان و جزء لفلان [5] و جزء لفلانة و إنَّ ابن ابى ليلى [6] * ابطل ذلك لمّا رُفِع ذلك اليه ، [7] و قال : انما ذَكَرَتْ شيئاً [8] لم تُسَمِّهِ ، [9] فقال ابو عبد الله ع م : لم يَدْرِ ابن ابى ليلى [10] وجهَ الصواب ، الجزءُ [11] واحدٌ من عشرةٍ ، [12] يعنى صلوات الله عليه أنَّ الأجزاءَ [13] كلها انما تَتَجَزَّاءُ [14] من عشرة ، فما دونها [15] يقال نصف و ثلث و ربع كذلك * و كذلك يَتَجَزَّاءُ الى العشرةِ [16] و ليس ذلك [17] فوقها ،

1 *Mus.* ii. 527_{17}. 2 *Mus.* ii. 526_{26}. 3 *A*, *C* امراءة ; *B* امرءة.

4 *B* جزأ. 5 *C* and *D* omit this clause 6 *A* ليلا.

7 Text as in *A* and *D*. *B* رفع ذلك اليه فابطله ; *C* and *Mus.* رفع اليه ذلك فابطله.

8 *A* adds مجهولاً here. 9 *C* يسمّه. 10 *A* ليلا.

11 *C* الجزأ. 12 *Mus.* عشر. 13 *A* omits ان. 14 *Mus.* يتجزّى.

15 This word is quite illegible in *A*.

16 *B* and *Mus.* كذلك الى العشرة ; *C* كذلك الى عشرة.

17 *A* adds دونها The text of § 17 is in great confusion in *A*.

§§ 18-19

[١٨] [1] و عنه عليه السلام انه قال فى رجل [2] اوصى لرجل بسَهْمٍ من ثلثه، [3] فقال: يُعطَى سُدُسُه لأَنَّ السِّهَام من ستة،

[١٩] [4] و عن علىّ [5] و ابى جعفر و ابى عبد الله صلعم انهم قالوا: لاوصيةَ [6] لِوارثٍ، و هذا اجماع فيما علِمْناه، و لو جازتِ الوصية للوارث لكان يُعْطَى من الميراث اكثرُ مما سمّاه الله تعالى له، [7] و من اوصى لوارثه فانما استَقَلَّ حقَّ الله ع ج الذى جعل [8] له و خالف كتابَه جل ذكره، و من خالف كتاب الله [9] جل ذكره لم يجز فعله، و قد جاءت رواية عن جعفر بن محمد دخلت من اجلها الشبهةُ على بعض من انتَحَل قوله، و هى أَنَّهُ [10] سُئل عن رجل اوصى لقرابته، فقال يجوز ذلك لقول [11] الله تعالى: إِنْ تَرَكَ خَيْرًا [نِ][12] ٱلْوَصِيَّةُ لِلْوَالِدَيْنِ [183 a] وَ ٱلْأَقْرَبِينَ، [13] و الذى ذكرناه عنه و [14] عن آبائه الطاهرين [15] هو أَثْبتُ و هو اجماع من المسلمين،

1 Cf. *Mus.* ii. 526_{33}. 2 *A* الرجل. 3 *B* ثلثة.
4 Cf. *Was.* ii. 664, Bāb 15, particularly Nos. 13–15; *Mus.* ii. 520_{33}.
5 *Mus.* ii. 520_{33} امير المؤمنين.
6 In *B* first ولية is written; and above it لوصية or لوصيلة.
7 *B* omits له. 8 *C* جعله. 9 *B*, *C* كتابه.
10 *C* adds عليه السلام. 11 *B* بقول.
12 *Sic* in *A* and *B*; *C*, *D* خيرن. All MSS. have this ن.
13 **2**, 176. See §§ 1 and 10.
14 *B* omits و. 15 *A* adds و.

§ 20 [٢٠] و عن [1] رسول الله صلى الله عليه و على اٰله انه قال : لاوصيةَ لوارثٍ ، [2] قد فرض الله لاهل المواريث [3] فرائضهم ، فإنْ [4] ثَبَتَ عن جعفر بن محمد ما ذكرناه آخِرا فانما عَنَى بالوالدين و الاقربين غير الوارثين كالقرابة الذين لا يرثون يَحْجُبُهم * مَن هو دونهم [5] و كالوالدَيْن المملوكَيْن او [6] المشركَيْن ، و قد ذكرنا ذلك فيما تقدّم أنّ المملوكَ يُشْتَرَى مِن تُراثِ وَلِيِّهِ [7] فيُعتَق [8] و يرث باقيه ، و سنذكر فيما بعد ايضاح ذلك انشاء الله تعالى ، و قد يكون المراد بالوصية لِلْوَالِدَيْنِ وَ ٱلْأَقْرَبِينَ بِٱلْمَعْرُوفِ [9] كما قال الله عز و جل أَىْ ما [10] يستَحِقُّون بالميراث ، و هو المعروف كالرجل يحضُرُهُ [11] الموت فيوصِى لورثته بماله على فرائضهم او يدفع ذلك اليهم [12] فى حياته على ما جعله الله لهم لئلّا يتشاجروا فيه بعده او ينكِرِ بعضهم بعضًا قرابَتَهم منه ، [13]

1 *B, C* و قد روينا عن ; *Mus.* فقد روينا.

2 Wensinck, *Ear. Muh. Trad.* 251; *Majmū'u'l-Fiqh*, ed. Griffini, No. 912; *Taisīru'l-Wuṣūl*, iv. 292-293; Shāfi'ī, *Kitābu'r-Risāla*, 39-40.

3 *D* الميراث. 4 *B* فانه ; *D* و ان. 5 *D* من هو اقرب منهم.

6 *A* و المشركين. 7 *D* و لده. 8 *B, C* فيعتق ; *A, D* و يعتق.

9 Here *A* adds و which puzzled me on a former occasion. Neither *B* nor *C* has it. For this phrase see §§ 1, 10 and 19.

10 *B, C, D* ما ; *A, Mus.* بما.

11 *B* حضرهُ ; *C* بحضر الموت. 12 *B* اليهم ذلك.

13 The author of *Mus.* here remarks that on this point Qāḍī an-Nu'mān differs from the majority of Imāmī lawyers and agrees with the generality of people (*'āmma*), i.e. Sunnites. He ascribes this opinion either to *taqīya* or to ignorance. *Mus.* ii. 521$_{9-11}$.

§§ 21-23 [٢١] و قد جاء عن جعفر بن محمد ع م انه قال فى العطية للوارث و الهبة فى المرض الذى يموت منه المُعطِى و الواهب إنّها غير جائزة ، [1] و هذا مما يؤيّد [2] ما ذكرناه ، [3]

[٢٢] [4] [183 *b*] و عن جعفر بن محمد ع م انه سئل عن الرجل يُقِرّ بالدَّين فى مَرَضه الذى يموت منه [5] لوارث من وَرَثَتِه ، قال : يُنظَر فى حال المُقِرّ ، فإن كان عدلاً مأمونًا من الحَيْف [6] جاز اقراره ، و إن كان على خلاف ذلك لم يجز اقراره إلّا أن [7] يُجيزه [8] الورثة ،

[٢٣] [9] و عن علىّ صلوات الله عليه انه قال : قضى [10] رسول الله بالدَّين قبل الوصية و انتم تقرءون [11] مِنْ بَعْدِ وَصِيَّةٍ [12] يُوصِى بِهَا أَوْ دَيْنٍ ، [13]

1 *Mus.* ii. 520_{13} انها جائزة !!

2 *A*, *D* ما يؤيد 3 *A*, *D* ذكرناه ; *B*, *C* ذكرنا.

4 Cf. *Was.* ii. 665, Bāb 16, *Mus.* ii. 521_{12}.

5 *B* فيه ; *C* originally فيه, above which in a modern hand is منه.

6 *B* الجنف.

7 *C* لان. *D* omits a whole line here, i.e. و ان كان — يجز اقراره.

8 *B* يجزه. 9 Cf. *Mus.* ii. 523_{15}. 10 *D* قضا.

11 *B* تقرون ; *C* نفرون ; *A*, *D* نقراءون. 12 *C* وصيه.

13 4, 12 (cp. 13, 15). *D* adds gloss : يعنى ذكر الله تع فى القرآن وصية اولا ثم دين بقوله من بعد وصية يوصى بها او دين ، فكان علم بذلك القول ان يخرج الدين من بعد الوصية ، فقضى رسول الله صلعم ان الدين يخرج قبل الوصية ، فالعمل على ما قال رسول الله صلعم لان علم معنى القرآن على الحقيقة م.

§ 24 [٢٤] [1] و عن الحكم بن عُيَيْنَةَ [2] قال : كنت جالسًا على [3] باب ابى جعفر ع م إذْ أَقْبَلَتْ امراءة فقالت : إسْتَأْذِنْ لى [4] على ابى جعفر فقيل لها : و ما تُريدين منه ، قالت : اردتُ أن أسأله عن مسألة ، [5] قيل لها : هذا الحكم فقيه [6] اهل العراق فَسَأَليه ، [7] فقالت : إنّ زوجى هلك و ترك الفَ درهم و كان لى عليه من صداقى خمسمائة درهم فأخذتُ صداقى و اخذت ميراثى ، ثم جاء رجل [8] فقال : لى عليه الفُ درهم ، و كنتُ اعرف ذلك له ، فشهدت بها فقال الحكم : إصبرى حتى أَتدبَّر [9] مسألتَكِ [10] و احسبُها ، و جعل يحسب [11] فخرج اليه ابو جعفر و هو على ذلك ، فقال : ما هذا الذى [12] تُحَرِّكُ به أَصَابِعَك يا حكم ، فاخبره فما أَتَمَّ الكلامَ حتى قال ابو جعفر : أَقَرَّتْ له بثُلُثَى [184 a] ما فى يديها و لا ميراث لها حتى تقضيه ، [13]

1 § 24 is almost the same as *Was.* ii. 669, Bāb 26, No. 8. *Mus.* ii. 523_5.

2 *D* adds انه ; *Mus.* عن ابن ابى عمير.

3 *A* عند.

4 *A* omits لى.

5 *B* مسيلة.

6 *B* adds above the word فقيه a word which is illegible.

7 *B* فاسئليه.

8 *D* adds اخر.

9 *A* ابتدر.

10 *B* مسئلتك.

11 *B* يحسبها.

12 *A* هذ الذى.

13 تقبض ه ـ ٢٦

§§ 25-27

[٢٥] [1] و عن علىّ و ابى جعفر * محمد بن علىّ صلوات الله عليهما [2] انهما قالا فى الرجل يوصى لرجل غائب بوصية [3] و مات على وصيته ، فنُظِر بعد ذلك فوُجِد الموصَى له قد مات قبل الموصِى قالا : بَطَلت الوصيةُ ، و ان كان غائبًا فاوصى له ثم مات بعده نُظِرَ ، فان كان قد قَبِل الوصية فهى لورثته ، و ان لم يقبلها فهى لورثة الموصِى ،

[٢٦] [4] و عن ابى جعفر و ابى عبد الله ع م انهما قالا للمرء [5] ان يرجع فى وصية [6] فى صحة كانت او مرض ، او يُغَيِّر منها ما شاء فهو فيها بالخيار ، و مامات عليه منها أُخرِج من ثلثه ،

[٢٧] [7] و عن علىّ و ابى جعفر و ابى عبد الله صلوات الله عليهم انهم قالوا : مَن اوصى بوصية [8] نُفذت [9] من ثلثه و إنْ اوصى بها ليهودىٍّ [10]

1 Cf. *Was.* ii. 668, Bāb 23, *Mus.* ii. 523_{19}.

2 *B* omits these words.

3 *A* and *Mus.* بوصيته.

4 Cf. *Was.* ii. 666, Bāb 18.

5 *A*, *C* للمراء ; *B* للمرء.

6 *Mus.* وصيته seems more natural. But all MSS. have the text reading.

7 Cf. *Was.* ii. 670, Bāb 32 ; *Mus.* ii. 523_{27} ; 524_{14}.

8 So *A*, *B*, *C*, *D*. But another MS. has فى وصية, which seems better.

9 *C* نفذت.

10 *B*, *C*, *Mus.* ليهودى ; *D* اليهودى او النصارى ; *A* لليهودى.

§§ 27–29

او نصرانيّ [1] او فيما اوصى به فانها [2] تُجعل [3] فيه لِقول [4] الله: فَمَنْ بَدَّلَهُ بَعْدَ مَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى ٱلَّذِينَ يُبَدِّلُونَهُ ، [5] يعنون [6] * اذا جعلها [7] فيما يجوز للحيّ المسلم أنْ يفعله ، فان اوصى بها فى غير ما يجوز لم يجز ، [8]

[٢٨] [9] وعن ابى عبد الله جعفر بن محمد ع م انه سُئل عن رجل اوصى فى حجّ [10] فجعل وصيّهُ [11] ذلك فى نَسَمَةٍ [12] قال [184 b]: يُغْرَم الوصيّ ما خالف [13] فيه و يُرَدّ الى ما امر الموصى به ، [14]

[٢٩] [15] وعنه ع م [16] انه قال: اوصت فاطمة بنت اسد

1 *A* النصرانى; *B* لنصرانى; *Mus. C* نصرانى.
2 *A, C* فانه. 3 *A, C* يجعل; *A, D* تجعل.
4 *B, C* لقول; *A, D* بقول. 5 2, 177.
6 *B, C, D* here add صلوات الله عليهم. 7 *D* الذين.
8 *A* تجر. *D* adds gloss: و مثل ان يقول خذوا من ثلثى خمرا فاعطوها للفقراء او لغيرهم، فذلك لا يجوز بل ذلك المال لورثته ، من شرح ،
9 Cf. *Mus.* ii. 524_{25}. 10 *B* حجه; a MS. reads بعجّ. 11 *B, D* وصية.
12 النسمة اى النفس، بقول عمله الميت اعتق عبدا وهو يعطى ذلك المال للفقير فيغرم ما اعطاه الفقير فيعتق ، من شرح ،
13 *B, C, D* خالف; *A* خلف
14 *C* adds gloss in margin: و ان قال اوصيت اليك و اذنت لك ان توصى الى من شئت لم يصح ذلك فان مات الموصى اليه اقام القاضى مقامه امينًا غيره ١٢
15 Cf. *Mus.* ii. 528_{27}.
16 *B, C* و عن ابى عبد الله جعفر ابن محمد ع م.

§§ 29–31 بن هاشم ام على بن ابى طالب الى رسول الله صلعم و قالت: يا رسول الله أَعْتِقْ خادمتى [1] فلانة، فقال: أَما إِنَّكِ ما قدَّمتِ من خيرٍ تَجِدِيه، فلما تُوُفِّيَتْ وقف رسول الله صلع على قبرها من قبل أَن تُنْزَل فيه و قال: اصبِروا ثم نزل صلع فَاضْطَجَعَ فى لحدها ثم خرج و قال: أَنْزِلُوها ادما فعلتُ ما فعلتُ اردتُ ان يوسعه الله عليها، فانه لم ينفعنى احدٌ نَفْعَها و نَفْعَ ابى طالب، و قام بوصيتها و نَفَّذها [2] على ما اوصت، [3]

[٣٠] [4] و عن جعفر بن [5] محمد ع م انه قال: من اوصى الى رجل فهو [6] بالخيار فى أَنْ يَقبَلَ الوصيةَ او يردها اذا كان حاضرا، فإِنْ رَدَّها بحضرة الموصِى لم تلزَمْه، و إِن كان قد أُوصِىَ اليه [7] و هو غائب ثم مات الموصِى فليس ينبغى للموصَى اليه أَنْ يَرُدَّ الوصيةَ، و قد مات الموصِى و صارت حقًّا من حقوق الله عز و جل،

[٣١] [8] و عنه ع م انه قال: من اوصى بثلث مالِه لعبده فانه يُقَوَّم، فان كان الثلث اقلّ من قيمة العبد بقدر ربع القيمة

1 *A*, *C* خادمى ; *Mus.* خادمتى. 2 *B*, *C* فنفذها. 3 *D* اوصتهُ.
4 Cf. *Was.* ii. 668, Bāb 23; *Mus.* ii. 522_{30}.
5 *A* omits بن ; *B* ابن. 6 *Mus.* فالموصى اليه. 7 *D* اوصى.
8 Cf. *Was.* ii. 672, Bāb 39; and 678, Bāb 79, No. 2; *Mus.* ii. 520_{15-16} and 527_{32}.

§§ 31–33 أَسْتَسْعَى العبدُ [1] فى الباقى، و ان كان الثلث اكثر من قيمة العبد [2] أُعتِق [3] العبدُ [4] و دُفع اليه الفضلُ، و ان لم يُعتَق بالقيمة من الثلث الا دون السدس لم تكن له وصية،

[185 a]

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[٣٢] [5] و عن علىّ عليه السلام انه سئل عن وصية المكاتَب [6] و الوصية له، فقال: يجوز منها بقدر ما عَتَق [7] منه، و هذا قول مجمل و قد فسّرناه فى باب المكاتبين، و إنّ المراد به مَن لم يُشتَرط عليه أَنّه إِنْ عَجَزَ [8] رُدَّ فى الرِّقّ رقيقًا، [9] فاما من اشتُرِط [10] ذلك عليه فسبيله سبيل المملوك فى ذلك حتى يُؤَدّىَ آخِرَ نُجومِهِ، و قد ذكرنا ذلك [11] فى المسئلة التى قبل هذه المسئلة حالَ الوصية للمملوك، [12]

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[٣٣] [13] و عن علىّ و ابى جعفر و ابى عبد الله صلوات الله عليهم انهم قالوا: لا وصيةَ للمملوك، [14]

1 The copyist of *A* first wrote استسعى فى العبد, he or someone else then corrects it by cancelling فى and vocalizes العبدُ as above. *B* has استسع العبد.

2 *D* قيمته. 3 *B*, *C* اعتق; *A*, *D* عتق.

4 *C* adds gloss in margin: بالقيمة من الثلث.

5 Cf. *Was.* ii. 678, Bāb 80; *Mus.* ii. 528_4. 6 *D* وصية للمكاتب.

7 *Mus.* اعتق. Here the *riwāya* in *Mus.* ends with منه.

8 *C* اعجز 9 *B* رد فى الرق; *A*, *D* رد رقيقا; *C* فى الرق رقيقا.

10 *A* اشرط. 11 D omits ذلك. 12 *C*, *D* الى المملوك.

13 Cf. *Was.* ii. 672, Bāb 39, Tradition 5, line 10; and 678, Bāb 78; *Mus.* ii. 527_{31}.

14 This *riwāya* is not to be found in *B*. *C* adds marginal gloss: إلّا على ما ذكرناه ١٢; an MS. reads لمملوك.

§§ 34-35

[٣٤] [1] و عن جعفر بن محمد ع م [2] انه قال : [3] اذا اوصى الرجل ، [4] يعنى بما يجاوز [5] الثلث ، فاجاز له الورثة ذلك فى حياته ، ثم بَدَا [6] لهم بعد الموت ، قال : ليس لهم أَنْ يرجعوا ،

[٣٥] [7] و عنه انه قال : إنّ أُمَامَة بنت [8] ابى العاص بن الربيع بنت [8] زينب بنت [8] رسول الله صلع كان [9] قد تزوّجها علىّ ع م بعد فاطمة ع م و تزوّجها من [10] بعده المغيرة بن نَوْفَل ، و انها مرضَتْ و أَعْتُقِلَ [11] لسانُها فدخل عليها الحسن و الحسين ع م فجعلا يقولان لها و المغيرة [185 b] كَارِهٌ لذلك [12] أَعْتَقْتِ [13] فلانًا و فلانًا [14] فتُومِى برأسها أَنْ نعم ، * و يقولان لها تَصَدَّقْتِ بكذا و كذا ، * فتومى برأسها ان نعم ، [15] و ماتت على ذلك ، فأَجازا وصاياها ،

1 Cf. *Was.* ii. 664, Bāb 13; *Mus.* ii. 520_{16-17}.

2 *B* (*sic*) و عن على و ابى جعفر و ابى عبد الله صلوات الله عليهما.

3 *B* انهما قالا.

4 *A* الرحل.

5 *D* بجازو, corrected in margin to بجوز

6 *C*, *D* بداء.

7 Cf. *Was.* ii. 674, Bāb 49, Nos. 1, 2; *Mus.* ii. 526_3.

8 *A* ابنت.

9 *C* انه كان.

10 *B* omits من.

11 *A* اعتفل; *B* اعتقل is to be found in the text. Above it, as a correction, someone has written اعتقد ! *C*, *D* اعتقل.

12 *B* لذلك كارة.

13 *B* اعتقتت; corrected afterwards into عتقتت. *D* او عننت *sic*.

14 *Mus.* و فلانة.

15 *B* omits this whole line from و يقولان. *D* و تومى ان نعم.

§§ 36–39

[٣٦] [1] و قال [2] جعفر بن [3] محمد ع م : و الاشارة [4] بالوصية لمن لا يَسْتَطِيع الكلامَ تَجُوز اذا فُهِمَتْ،

[٣٧] [5] و عنه انه قال فى رجل أَوصَى أَنْ تُعْتَقَ [6] عنه نسمةٌ بمائة دينار فوجدوها [7] بأَفَلَّ [8] قال : يُرَدّ الفضلُ على النسمة يعنى اذا كان [9] قد سمَّاها [10] و إنْ أَبْهَمَهَا فعلى الوصىّ ان يَشْترى نسمة بمائة دينار [11] إنْ وجدها كما اوصى اليه،

[٣٨] [12] و عنه انه قال فى رجل اوصى الى رجل و عليه دَيْنٌ فاخرج الوصىّ الدين من رأس مال الميت فَقَبَضه اليه و صَيَّرَه فى بيته و قَسَم البافى على الورثة و نَفَّذ الوصايا، ثم سُرِق المالُ من بيته، قال : يُضَمَّنُ لِأَنَّه ليس له ان يقبِضَ مالَ الغُرَمَاءِ بغير امرهم،

[٣٩] [13] و عنه انه سُئِلَ عن وصية قاتلِ نفسه قال : اذا [14] اوصى

1 Cf. *Was.* ii. 674, Bābs 48, 49; *Mus.* ii. 525_{30}.

2 *B, C* قال. 3 *B* ابن. 4 *B* الاشار.

5 Cf. *Mus.* ii. 527_{28}. 6 *C* نعتق; *A, B, D* يعتق.

7 *A, B* وجدوها; *C, D* فوجدها. 8 *B* adds من ذلك.

9 *A* كانت. 10 *A* سما; *D* سمّاه.

11 *B* omits دينار; *C* omits بمائة دينار.

12 Cf. *Mus.* ii. 524_{17}.

13 Cf. *Mus.* ii. 526_{12}. 14 *B* ان.

§§ 39–42 بها بعد أن أحدث الحدث [1] فى نفسه و مات منه [2] لم تجز وصيتُهُ، [3]

[٤٠] [4] و عنه انه قال: من اوصى بوصايا ثم مات، و قد كان دفع الى عياله ارزاقهم لمدة فما فَضَل عن يوم موتهِ فهو تركةٌ و الوصية تجزى [5] فيه،

[٤١] [6] و عن علىّ ع م انه قال: لا يُزيل الوصىَّ عن [7] الوصية إلّا ذهابُ [8] عقل او ارتدادٌ او تبذير او خيانة او تركُ سنة، و السلطان [9] وصىُّ مَن لا وصىَّ له و الناظر [10] لمن لا ناظرَ له، [11]

[٤٢] [12] و عن ابى جعفر محمد بن علىّ [13] ع م انه قال: اذا أُذِن الموصِى للوَصِىِّ أن يَتَّجِرَ بمال [14] وُلْده الاطفال فله ذلك و لا ضمان عليه فيه، و إن شَرَطَ له فيه رِبْحًا فهو على شرطهِ، [15]

1 *B* omits this word. 2 *A* عنه; *B*, *C* منه.

3 So in *B* and *C*. *A* وصية. *D* adds gloss in margin: و ذلك مثل ان يوصى من بعد ان اكَلَ السُّمَّ لان يموتَ فتلك الوصية لا تجوز ..... من ثلثه من ماله كالورثته فان لم يكونوا فلبيت المال فان اوصى قبل ان احدث فى نفسه فذلك يجوز من ثلثه، من شرح،

4 Cf. *Mus.* ii. 528_{25}.

5 *C*, *D* تجزى. *A*, *B*, *Mus.* تجرى.

6 Cf. *Mus.* ii. 528_{31}.

7 *A*, *D* من. The words عن الوصية are omitted in *Mus.*

8 *Mus.* زوال. 9 *B* فالسطان. 10 *D* نظر.

11 *Mus.* has just this sentence and no more: ii. 528_{19}.

12 Cf. *Mus.* ii. 528_{21}. 13 *B* و عن جعفر ابن محمد.

14 *B* فى مال. 15 *Mus.* على ما شرطه.

§§ 43-44

[٤٣] و عن جعفر بن محمد ع م[1] انه قال: اذا اتّجر[2] الوصيّ بمال اليتيم و لم يُجعَل له ذلک فی الوصية * فهو ضامِنٌ لِمَا نَقَص[3] من المال و الربح لليتيم،

[٤٤][4] و عن جعفر بن[5] محمد ع م انه قال: من اوصی بوصية و ترک وَرَثَةً غُيَّبًا فرَفَع صاحب الوصية ذلک الی القاضی، فإنّ القاضی يُوَكِّل وكيلا للغُيَّب يقاسم[6] الوصيّ، [186 *a*, l. 12]

Note.—I should like here to express my gratitude to two Shaikhs in particular who were good enough to help me in the preparation of the text. Shaikh Hibatu'l-lāh ibn Shaikh Shamsu'd-dīn (of Bombay) read the MS. and made numerous corrections and suggestions, and explained several difficult passages to me. Shaikh Ismā'il Bhaisaheb ibn Shaikh Luqmānjī (of Burhānpūr, C.P.) read a proof and corrected it after comparing it with an old and accurate copy of the *Da'ā'im*. To both these courteous scholars my sincerest gratitude is due. The accuracy of the text, such as it is, is due largely to their learning and exertions; the responsibility for the errors and imperfections is entirely mine.

A. A. A. F.

1 *B* عنه و.
2 *B* اذا تجر.
3 *B* صامن من لما نقص.
4 Cf. *Mus.* ii. 528_{31}.
5 *B* ابن.
6 *B* نقاسم.

KITĀBU'L-WAṢĀYĀ

The Book of Wills

(A) Concerning the Injunction to make Wills and what may be Bequeathed

§ 1. [f. 174 b_8] Says God, exalted is He, *It is prescribed for you that when one of you is face to face with death, if he leave (any) goods, the legacy is to his parents, and to his kinsmen in reason. A duty this upon all that fear.*[1] And He says, mighty and great is He, *O ye who believe! let there be a testimony between you when any one of you is on the point of death—at the time he makes his will—two equitable persons from amongst you; or two others from some other folk.*[2] §§ 1–4

§ 2. And it is related to us[3] from Ja'far b. Muḥammad, on whom be peace, from his father, from his ancestors, from 'Alī, that the Prophet, the blessings of God be upon him and his progeny, said: 'It does not befit a Muslim to pass two nights without having a written testament under his head.'

§ 3. And (it is related) from Abū Ja'far Muḥammad (al-Bāqir) b. 'Alī that he said: 'Bequest is incumbent on every Muslim.'

§ 4. And from Ja'far b. Muḥammad, on whom be peace, who was told: 'When your slave A'yan (b. Sansan)[4] was about

[1] 2, 176. This passage is not free from difficulty. See the commentaries. As regards Qur'ānic passages, I have generally adopted Palmer's renderings.

[2] 5, 105.

[3] Usually vocalized *ruwīnā*, but some shaikhs prefer to read *rawaynā*, we relate' referring to Mu'izz and Nu'mān.

[4] According to the *Muntahā'l-Maqāl*, p. 60, this A'yan was a Greek slave. He was bought by a man of the Banī Shaibān who educated, and ultimately adopted and freed him. A'yan was a *ḥāfiẓ* and a learned man.

§§ 4-5 [175 *a*] to die, the pangs of death were very painful to him. Then he improved so that we thought he had recovered. Yet later on he died.' He (Ja'far) said : ' This is the restfulness which precedes death. For verily, not a single person dies but God returns to him his reason, and his powers of hearing and sight ; and He causes him to remember the number of his belongings which are either disposed of or inherited, in order to enable him to make his testament.'

§ 5. And from the Prophet, on whom be peace, who said : ' He who does not make his will in the proper manner at the time of his death, will be considered to be faulty in respect of his consideration[1] (for others) and his wisdom.' They said : ' O Prophet, and how should a dying man make his testament ? ' He said : ' When death draws nigh to him and people forgather, he should say, " O my God, Creator of the Heavens and the Earth, Knower of that which is concealed and that which is manifest ; the Compassionate, the Merciful ! Verily I have sworn allegiance to Thee in this world ; verily I bear witness that there is no deity other than Thee—unique art Thou and there is no associate with Thee—and that Muḥammad is Thy slave and Messenger. And (I bear witness) that the Garden (Paradise), and the Fire (Hell), and the Return (Resurrection), and the Reckoning, and Predestination and the Balance are all true. And that religion is as Thou hast described ; and Islām as Thou hast laid down ; and the Word, as Thou hast uttered ; and the *Qur'ān*, as Thou hast revealed. And that Thou art the Lord, real and manifest. May God requite Muḥammad on our behalf with the best of requitals, and may He greet him with greetings of peace. O my God, my Refuge[2] in times of anxiety, and my Companion in times of distress, and my Guardian in times of ease ; my Lord and the Lord of my ancestors, do not entrust me to myself even for the twinkling of an eye, for if Thou dost so [175 *b*],

[1] This *muruwwa* can only be for those who benefit by the terms of the testament.

[2] Lit. ' provision '.

I shall draw nigh to Evil and recede from Goodness. And be friendly to me in the loneliness of my grave, and consider me as one within Thy covenant on the day I meet Thee." Then he may bequeath according to his need.' This then is the covenant of the dying. And bequest is incumbent on every Muslim. §§ 5–7

§ 6. And 'Alī said : ' The Prophet taught me this testament, saying that Gabriel had taught it to him.'

§ 7. And from 'Alī who said : ' He who feels that the time of his death has come, should renew his covenant and his testament.' He was asked, ' And how should a testament be made, O Prince of Believers ? ' He said : ' (You should begin by) saying : " In the name of God, the Merciful, the Compassionate. This is a testimony from God,[1] to which fact *X*, the son of *Y*, bears witness. *God bears witness that there is no deity other than Him, and so do the angels and the possessors of knowledge. The Maintainer of justice, there is no deity other than Him, the Mighty, the Wise.*[2] O my Lord, he who comes from Thee, and is going towards Thee, and who is within Thy possession and power, for him Thy hands are far-reaching. Thou providest as Thou wishest, and Thou art the Gentle and the Knowing One.

' " In the name of God, the Merciful, the Compassionate. This is the testament of *X*, the son of *Y*. He bears witness that there is no deity other than Him, unique is He and without associate ; and that Muḥammad is His slave and Messenger.

[1] Reading شهادةٌ (هذه), referring to the Qur'ānic verse which follows It is also possible to read شهادةً (أشهد) ' I bring a testimony from God '

[2] 3, 16. The commentators are not agreed as to the construction of *qā'iman bi'l-qisṭ*. I have therefore given my own rendering, adopting the construction of Baidāwī, Muhammad Ali and Pickthall, and dissenting from Rodwell and Palmer. Palmer renders it as follows :

' God bears witness that there is no god but He, and the angels, and those possessed of knowledge standing up for justice. There is no God but He, the mighty, the wise.'

§§ 7-8 He (God) sent him to teach righteousness and the true faith, and *to warn him who is living; but the sentence is due against the unbelievers.*[1] O my Lord, I call Thee to bear witness,—and Thou art sufficient as a witness—and those who carry Thy throne, and those who reside in Thy heavens and in Thy earth, and those whom Thou hast sown, and created out of nothing, and re-shaped, and caused to flow,—that Thou art Allāh, there is no deity other than Thou, unique art Thou and without associate, [176 *a*] and that Muḥammad is Thy slave and Messenger; and that the Hour[2] is doubtless to come; and that God will resurrect those who are in the graves; and the Garden and the Fire are realities. I utter these words of mine with him who utters them with me, and I utter them instead of him who denies. There is neither power nor strength save in God, the Exalted, the Mighty. O my God, write my testimony with the testimony of him who bears witness to what I have borne witness; and as for him who refuses,—write my testimony in the place of his; and allow me to enter Thy covenant with it —a covenant which thou wilt fulfil with me on the day I meet Thee alone. Verily Thou shouldst not break Thy promise."[3] Then he should lay himself down in the direction of the Qibla saying, " (I am) a follower of the religion of the Prophet, being a righteous man and a Muslim and I am not one of the polytheists ". And then he should make his testament as the Prophet commanded.'

§ 8. And from Ja'far b. Muḥammad, he said that the testament of the Prophet to 'Alī contained the following: ' O 'Alī, I commend to you certain virtues for your own sake, which you must always remember.' Then he (the Prophet) said: ' O my God, help him. Firstly, truth,—never utter a falsehood from your mouth. Secondly, piety,—never venture upon dishonesty. Thirdly, Fear of God,—(fear Him) as if He

[1] **36, 70.**

[2] Of reckoning and resurrection.

[3] Or ' do not postpone the promised time of meeting '.

were ever present in your sight. Fourthly, excessive weeping in (the fear of) God,—it will build for you, with every tear, a thousand mansions in Paradise. Fifthly, expend your wealth and sacrifice your blood for your faith. Sixthly, adherence to my practice in prayer, fasting and charity. [176 *b*] As for prayer, (pray) 51 *rak'as* each day. As for fasting, 30 days[1] (are prescribed for you); and in each month, Thursday in its earlier, Wednesday in its middle, and Wednesday in its final, part. And as for charity, endeavour to such an extent, that it may be said that you are extravagant. But do not be wasteful. And pray by night, pray by night, pray by night.[2] And I enjoin you to pray at the time of *zawāl*,[3] at the time of *zawāl*, at the time of *zawāl*. And recite the *Qur'ān*, recite the *Qur'ān* under all circumstances. And raise your hands in prayer,[4] and use a tooth-stick[5] at the time of each ablution (*wuḍū'*). As for virtuous qualities, hold fast to them[6]; and as for evil characteristics, avoid them. And if you do not act in this manner, do not blame any one except your own self.' §§ 8-9

§ 9. And from 'Alī (Zainu'l-'Ābidīn) b. Ḥusain and Muḥammad (al-Bāqir) b. 'Alī, on whom both be the blessings of God, that they related the testament of 'Alī (b. Abī Ṭālib), the blessings of God upon him. They said: 'He made the testament in favour of his son, al-Ḥasan, while his sons Ḥusain and Muḥammad (ibn al-Ḥanafīya), and all his children, and the leaders of his party, and the people of his house bore witness. Then he handed over to him (Ḥasan) the books and weapons, and said: "The Prophet ordered me that I should give my dying injunctions to you and deliver to you my books

[1] This refers to the month of Ramadān. The other fasts are merely recommended, but are not obligatory.

[2] This threefold injunction is for emphasis.

[3] *Zawāl* is the inclination of the sun after reaching the highest point at midday: hence afternoon. The *zawāl* prayers are *Zuhr* and *Aṣr*.

[4] It is significant that the *Da'ā'im* teaches *raf'u'l-yadain*. As is well known, this is one of the most vexed questions in the different *sharī'a* schools.

[5] Made of *Caporis Sodata*.

[6] Literally, 'ride' them.

§ 9 (*contd.*) and my weapons, even as the Prophet gave his dying injunctions and handed over his books and weapons to me. And he charged me to command you to deliver them over to your brother Ḥusain, when you are face to face with death." [177 *a*] Then he turned to Ḥusain and said: "The Prophet has ordered you to deliver (them likewise) to this son of yours." He then caught hold of his (Ḥusain's) son, 'Alī b. al-Ḥusain, by the arm and embraced him and said to him: "O my little son, the Prophet has commanded you to deliver them to your son, Muḥammad; and transmit to him the Prophet's and my salutations." Then he ('Alī b. Abī Ṭālib) turned to his son Ḥasan and said: "O my son, you are the guardian of the divine command and the guardian of the blood.[1] If you forgive, it is on you that the decision rests; but if you wish to avenge,[2] then return blow for blow and no guilt will lie on you."[3] And before this he had specially selected Ḥasan and Ḥusain for giving the secret injunctions in which he had written for them the names of the kings, and the period of the existence of this world, and the names of the *dā'īs* to the day of resurrection. And he had handed over to them the book[4] of the *Qur'ān* and the Book of Knowledge.[5]

1 That is, guardian of the lives of those under your care, and avenger of my blood

2 Literally, 'if you wish to fight (or kill)'.

3 Reading *ta'thamo*. But the other reading *ta'tam* also makes good sense and would mean 'do not tarry'. See scholium in *B*. The accepted reading may also mean that punishment to Ibn Muljam should not be disproportionate to his crime. See further *Majma'u'l-Baḥrain*, 524_6, which says as follows:

و فی حدیث علی۴ للحسن۴ فی ابن ملجم ضربة بضربة و لاتاثم ای لا اثم علیک بذلک فان القصاص حق امر الله تع به

4 Means the *written* copy of the *Qur'ān* (lit. 'recitation'). The importance of these lines lies in the fact that some Ismā'īlīs assert that they have the *true* text of the *Qur'ān*. Not that the *textus receptus* is false; but they say it omits certain references to 'Alī. For a similar Shī'ite theory see Mirza Kazembeg's art. in *JA* for 1843, 378 *et sqq.*

5 The reference here is obviously to the esoteric knowledge which the sectarians claim. Probably this refers to the *Ḥaqā'iq*, for which see p. 23 above.

And when the people gathered round, 'Alī said to them (Ḥasan and Ḥusain) what he said. Then he ('Alī) wrote a written testament, and it was this : § 9 (*contd.*)

'"In the name of God, the Merciful, the Compassionate. This is the testament of 'Abdu'l-lāh 'Alī b. Abī Ṭālib made in his last moments in this world. And he is about to travel[1] towards the 'half-way house of the dead',[2] and on a journey away from relations and friends. He bears witness that there is no deity other than God, unique is He and without associate, and that Muḥammad is His slave and His Messenger and His trusted one, the blessings of God on him and on his brother apostles and on his excellent progeny. And may God, on our behalf, [177 *b*] requite Muḥammad with the most excellent of such requitals as may be made to a prophet by his community. And I enjoin you, O Ḥasan, and all who are in my presence from amongst the People of my House, and my children and my partisans, to fear God, and *do not die until you embrace Islām. And hold firmly the rope of God and do not divide yourselves into sects.*[3] For verily I have heard the Prophet saying that 'the composing of differences and the strengthening of the bonds of friendship among men is better than all fasts and prayers'. And I enjoin you to act before your speech is taken away from you (at the point of death), and I enjoin you to consider health as a great opportunity before disease overtakes you, and *Lest a soul should say : Oh woe to me ! for what I neglected towards God ! for, verily, I was amongst those who did jest ! or lest it should say, if God had but guided me, I should surely have been of those who fear.*[4] How can this be now ?[5] And you

1 *M-B.* 290. 'Returns' would probably be a more literal version.

2 *Barzakh* is a hindrance, barrier, etc. *EI*, i. 668. It is 'the interval between the present life and that which is to come, from the period of death to the resurrection, upon which he who dies enters'.—Lane, *Lex.* i. 187. In my rendering I have tried to indicate a further journey forward.

3 **3**, 97-98. 4 **39**, 57-58.

5 Lit. 'In what manner (or how) ? and wherefrom (or whence) ?' God is addressing the sinner.

§ 9 (*contd.*) were ruled by your passions.[1] And his sight was uncovered and his veils were rent asunder.[2] Says God, exalted is He: *and we withdrew thy veil from thee, and today is thy eyesight keen.*[3] And whence can he have sight now? Did it (the sinner's sight) not show him the harm before this time, and before the curtain was dropped on penitence by the descent of calamity?[4] And the soul desires that if it could return, it would act in the fear of God; but these wishes are of no avail. And I enjoin you to avoid passion, for verily passion leads to blindness, and blindness, to your doom both in this world and in the next. And I request you to be sincere in your devotion to God, great and mighty is He; and why should you not be sincerely devoted to One who removed you from amongst the polytheists,[5] and rescued you from the persistent denial of the agnostics? So worship Him out of your own free will and also out of fear. And this will not be [178 *a*] futile in His eyes. And I enjoin you to be sincerely devoted to the righteous guide and Messenger, Muḥammad; and one of the ways in which you can show your devotion to him is that you should return to him his dues. Says God, *Say, 'I do not ask for it a hire—only the love of my kinsfolk.'*[6] And a man who repays to Muḥammad his dues by showing affection towards his (the Prophet's) relations, he verily has returned what was entrusted to him.[7] And he who does not return it (the *amāna* or thing entrusted), becomes his (the Prophet's) adversary, and he who becomes the Prophet's adver-

[1] The change in the form of address is to be carefully noted.

[2] 'His eyes were opened'—as we would say today.

[3] **50**, 21.

[4] This يوم القيامة is the day of resurrection.

[5] Lit. 'he who takes you out of the loins of the people who associate others with God'.

[6] **42**, 22.

[7] ادّى الامانة refers to **4**, 61. This is *Walāya*, the first 'pillar' of Islām.

sary, contends with[1] the Prophet; and he who contends with the Prophet, verily he brings upon himself the wrath of God, and *his resort is Hell. An evil journey shall it be.*[2] § 9 (*contd.*)

'"O people, verily Muḥammad is not loved except for the sake of God,[3] and the progeny of Muḥammad is not loved except for the sake of Muḥammad. Therefore he who wishes may decrease his love, and he who wishes may increase it. I enjoin you to be affectionate to us and be kind to our partisans, for he who does not do so, is not one of us. I enjoin you to love the companions of the Prophet who were not innovators (in religious matters), and did not shelter an innovator, and did not deny the truth. For verily the Prophet left them to our care, and cursed the innovators amongst them and amongst others. I enjoin you to be clean ritually,[4] without which prayer[5] cannot be complete; and to pray, for prayer is the prop of faith and the mainstay of Islām—so neglect it not. (I enjoin you to give) *zakāt* which perfects prayer, and to observe the fast in the month of Ramaḍān; and *a pilgrimage unto the House* (*Ka'ba*) *for whosoever can find his way there.*[6] And I enjoin you to fight in the way of God, for verily it is the best of actions,[7] and the strength of faith and of Islām. And I prescribe fasting [178 *b*] for you, for verily it is a covering to shield you from fire (Hell). And I warn you to observe strictly the hours of prayer, for verily he who misses prayer is not one of my people.

[1] خَصَمَ also means 'he got the better in a lawsuit'.—Wright, *Grammar*[3], i. 33A.

[2] **3**, 156.

[3] That is, to please Him.

[4] *Ṭahāra* is ritual purity, in accordance with the *sharī'a* injunctions, and not mere cleanliness. Ablution (*wuḍū'*) is only one aspect of *ṭahāra*, as it conduces to physical cleanliness. This is the second 'pillar'.

[5] *Ṣalāt* is formal and ritual prayer, usually congregational. It is public and compulsory; and must not be confused with private prayer, *du'ā* or *munājāt*. This is the third 'pillar'.

[6] **3**, 91. Here we have the fourth, fifth and sixth 'pillars'.

[7] *Dhirwa* or *dhurwa* is 'apex' or 'top'. This is the seventh and last 'pillar'.

§ 9 (*contd.*) And I prescribe for you the afternoon prayer, for verily it is the prayer of the penitent. And I enjoin you to pray four *rak'as* after the sunset prayer,[1] and do not forsake them even if you fear an enemy. I enjoin you to remain awake by night, I enjoin you to remain awake by night, I enjoin you to remain awake by night, from its early part to the end. And if sleep overcomes you, (let it do so) in its end. And he who is prevented by disease, then verily God will excuse him. He who omits the *witr*[2] prayer, or overlooks the two *rak'as* of the morning prayer does not belong to me or my party. And he who devours property unlawfully will be unable to present himself to the Prophet; by God—never, by God—never, by God—never. And he will be unable to drink from his pond, nor will he obtain the Prophet's intercession, by God—never. Nor he who is accustomed to drink any of the intoxicating drinks. Nor he who commits adultery with a married woman, by God—never. Nor he who did not recognize my right, nor the right of the People of my House, to which they were most entitled, by God—never. And one who has followed his passions, or whose stomach is full while his neighbour—a believer—is hungry, will not be able to enter into the Prophet's presence. And no one who does not adhere to justice for the sake of God, will be able to enter into the Prophet's presence. Verily the Prophet charged me and said: 'O 'Alī, *bid what is reasonable and forbid what is wrong*,[3] by your own hand. And if you cannot do so,

[1] This is the *taṭawwa'*, see *Ṣaḥīfatu'ṣ-Ṣalāt* by Ḥājī Ghulām Ḥusain (Bombay, Muṣṭafā'ī Press, no date, latest edition), 34. This book gives the prayers of the Sulaimānī Ismā'īlīs, and is a very valuable source of information for those who can read Urdu.

[2] The *witr* prayer consists of one *rak'a* and is to be offered after the *shafa'* (two *rak'as*) prayer; after this come two *rak'as* of the *julūs* prayer. The *shafa'*, *witr* and *julūs* prayers are to be offered after the *'ishā'* (night) prayer; and the proper time to offer them is from midnight to an hour and a half before sunrise. See the Sulaimānī *Saḥīfatu'ṣ-Ṣalāt*, 36.

[3] **3**, 16. This *waṣīya* is one of the sources of the authority of 'Alī to execute the orders of the Prophet, and to administer the *sharī'a* laws.

then by your tongue. And if you cannot [179 *a*] do so, then by your heart. Or else do not blame any one except your own self.' I warn you to avoid backbiting, for verily it nullifies (all your) actions. Have regard for your kith and kin; and scatter greetings and distribute food to people. And pray while the people are asleep. And I enjoin you, O children of 'Abdu'l-Muṭṭalib in particular, to show your generosity to him who acts kindly to you; and to fulfil the hopes of one who has hopes in you, for verily this befits your (noble) ancestry. Avoid hatred towards your kindred who are believers, for verily it promotes discord in religion. I enjoin you to be civil to people, for verily this is charity. And repeat very often the saying: 'There is neither might nor strength save in God', and teach it to your children. And be expeditious in the circumcision of your children, for verily it is cleaner for them. And never utter a falsehood from your mouths so long as you live. And do not use obscene language, for it befits neither us nor our party. Verily the man with a foul tongue cannot be truthful. And the conceited man is accursed, and the courteous man is high, in the estimation of God. Beware of conceit for verily it is the cloak[1] of God; and he who fights with God for His cloak, God punishes him. And fear God, fear God,[2]—never allow orphans to remain hungry in your presence. And fear God, fear God,—concerning the traveller, let him not feel lonely and yearn for his kinsfolk when he is your guest. And fear God, fear God,—regarding a guest, never let him depart without his

§ 9 (*contd.*)

[1] *Kibr* befits God alone. See *M·B.* 37 where the idiom is fully explained in reference to the *ḥadīth* الكبرياء ردائى و العظمة ازارى.

[2] Reading *wa'l-lāha'l-lāha.* It is possible to read this invocation in different ways, e.g. وَ اللّٰهَ اللّٰهَ, etc. But the best explanation was by a shaikh who read it with two *fatḥas*, explaining that there is a double elision, thus وَ اتَّقُوا اللّٰهَ اتَّقُوا اللّٰهَ. Instead of اتقوا the verb احذروا may also be read. The repetition is for emphasis. See also the Qur'ānic verses cited shortly afterwards.

9 (*contd.*) being grateful to you. And fear God, fear God,—concerning the fight with your passions—for verily they are the worst of your enemies,[1] and verily God, glorious and exalted is He, says: *Verily the spirit is prone to evil; except on what* (179 *b*] *my Lord is merciful*[2]—now surely the first of sins is the support of the baser spirit and reliance upon passion. And fear God, fear God, do not desire the world,[3] for verily the world is the source of all errors. He (who desires it) becomes frail, and this afterwards leads to his decline (and fall). Beware of envy, for verily it was the first sin to be found in the Jinns, before human beings. Beware of trusting women, for it was they who caused your father (Adam) to depart from Paradise, and rendered him up to the affliction of this world. Beware of thinking ill of others, for such conduct renders (good) actions void. And *Fear God and speak a righteous speech.*[4] This will make your actions righteous and your sins will be pardoned. And I enjoin you to obey him whose disobedience will not be excused in you.[5] I enjoin you to be devoted to us, the People of the House, for God has coupled obedience to us with obedience to Him and His Messenger. And He has laid this down[6] in a verse of His Book as a favour. This is a duty laid down by God on us and on you, which makes obedience obligatory to Him and to His Messenger, and to those from among the People of the House of His Messenger, who are possessed of authority. And He has commanded you to ask questions[7] to the *ahl adh-dhikr*; and we, by God, are the *ahl*

[1] اعدى العدو is permissible because عدو can be used alike in the singular as well as the plural sense. Lane, s.v. عدو, i. 1980. Cf. *Qur'ān*, **63**, 4 هم العدو فاحذرهم.

[2] **12**, 53. [3] Worldly pleasure and worldly good.

[4] **33**, 70.

[5] Refers most probably to the Imām and his *ḥudūd* (officers).

[6] Lit. 'arranged' or 'set (as pearls in a string)'. For the verses see below.

[7] Regarding legal and religious matters.

adh-dhikr.[1] No one who is not one of us, save a liar, will make this claim. And the words of Him who is Glorious and Mighty confirm this: *God has sent down to you a reminder;—an apostle to recite to you God's manifest signs;—to bring forth those who believe and act aright from darkness into light.*[2] He further says: *Ask ye the People of the Reminder (or Admonition),*[3] *if ye know not yourselves.*[4] And we, I swear by God, are the *ahl* [180 *a*] *adh-dhikr*. Accept therefore our authority, and abstain from what we have forbidden. For verily we are the Doors concerning which you were commanded *to enter the houses by the doors thereof*;[5] and we, by God, are the Doors of these houses.[6] No one else except us has this position, and no one except us can make this claim." §9 (*contd.*)

'(And then 'Alī said:) "O people, if there is any one amongst you who can complain before me of an unjust order, or wrong done to his person or property, then let him rise; I will give him justice regarding it." A man from among the tribe rose and eulogized him greatly and commended him highly and mentioned his attainments in a long discourse. Then said 'Alī: "This is not the time, O you who speak,[7] for praise; what I desire is to be face to face, in this gathering-place, with someone who is not well-disposed towards me. And God is the witness against him

[1] The meaning of *dhikr* is not very clear and the word is variously translated in diverse contexts: Horovitz, *Koranische Untersuchungen*, 7; Baiḍāwī, ed. Fleischer, ii. 349_5 *et seq.* Generally *ahl adh-dhikr* are supposed to be the same as *ahl al-kitāb*; hence the importance of this Ismā'īlī explanation. *Dhikr* also means prayer, remembrance and mention of God, honour, etc. The best exposition of the usual Shī'ite doctrine is to be found in *M-B*, 246, s.v. *dhikr*.

[2] **65**, 11.

[3] These are generally supposed to be Jews and Christians.

[4] **16**, 45. [5] **2**, 185.

[6] This is another example of Ismailitic *ta'wīl* (allegorical interpretation).

[7] Lit. 'O thou slave who speakest'.

§ 9 (*contd.*) who, having seen something that he disapproves, did not inform me of it. For surely I would like to reproach my soul before it leaves me. O my God, verily Thou art witness, and Thou art sufficient as a witness, verily I and three of the People of my House have covenanted with Thy Messenger and Thy proof in Thy earth, Muḥammad, that we shall, for the sake of God, obey each one of his (Muḥammad's) commands, and avoid each one of his prohibitions.[1] And not one of his (the Prophet's) friends will remain unbefriended by us; and not one of his enemies, but will be treated like an enemy by us. We shall not turn our backs upon the enemy, nor shall we grow weary of obligatory acts; and we shall not augment towards God and His Messenger aught save sincerity and devotion. Now my companions were killed, may the mercy and approval of God be upon them, and all of them were of the People of my House. 'Ubaida b. al-Ḥārith, may the mercy of God be on him, [180 *b*] died a martyr at the battle of Badr; and my uncle Ḥamza died a martyr at the battle of Oḥod, may the mercy of God be on him; and my brother Ja'far died a martyr at the battle of Mu'ta, may the mercy of God be on him. Then God revealed (in the verses of the *Qur'ān*) the following concerning me and my companions: *among the believers are men who have been true to their covenant with God; and there are some who have fulfilled their vow; and some who wait but have not changed with fickleness.*[2] I am, by God, the expectant one and have not 'changed with fickleness'. Further He, out of His kindness, promised us a good reward and said: *Say, 'By the grace of God and by His mercy,—and in that let them rejoice. It is better than that which they collect.'*[3] And in

[1] Or 'we shall not allow, for the sake of God, any of his (the Prophet's) behests to remain unobeyed; nor any of his prohibitions, unavoided'.

[2] **33**, 23. The battle of Badr is referred to in the earlier part of *Anfāl*, Sura viii.

[3] **10**, 59

§ 9 (*contd.*)

the injunction that I should rejoice at the kindness of my Lord there is comfort for me."

'They then praised him with the best praises and wept. He ('Alī) said: "O people, I desire you to bear witness that no one amongst you rose saying, 'I desired to speak but was afraid'. Now verily, as between you and me, I absolve you from all blame. O my God, lo! if there is any one desiring to do me wrong or to make a complaint against me regarding an offence which I have not committed, then take heed that I have never taken either the property or the life of any person, unless it was lawful for me to do so. In the company of the Prophet, I waged holy war by the command of God and that of His Messenger. And when God removed His Messenger, I waged holy war against those among the wrongdoers whom the Prophet ordered me to fight. And he (the Prophet) named each one of them and incited me to fight against them. He said: 'O 'Alī, fight the perjurers'[1]—and he named them to me; 'and the unjust'[2]—and he named them to me; 'and with those that stray from the true path'[3]—and he named them to me. Therefore let not opinions or sayings be increased [181 *a*] amongst you. For verily man is most truthful in this[4] condition."

'And they (the people) spoke good words and praised him with the best praises and wept. And he ('Alī) turned to Ḥasan and said, "O Ḥasan, you are the guardian of my blood, and he (Ibn Muljam) is with you and I have handed him over to you, referring to Ibn Muljam, may God curse him. To no one else is authority given in this matter. If you wish to kill him, then do so; and if you wish to forgive him, do so. You are the Imām after me, and the heir to my knowledge, and the most excellent of those whom I leave behind after me, and the best

[1] Cf. **48**, 10 : **9**, 12, etc. For a similar tradition among the Twelvers see *M-B*, s.v. نكث, 164.

[2] Cf. **72**, 14-15.

[3] *M-B*, s.v. مرق, 462.

[4] That is, while he is expecting death.

§ 9 (*contd.*) of my successors among the People of my House. And the Prophet has given good tidings to your brother, the son of your mother (Ḥusain),[1] and yourself; so you too, in your turn, give good tidings to others from what has been given to you. And act in the obedience of God and thank him for his favours." Then he continued to say: "O my God, protect us from Thy enemy, the pelted one (Satan). O my God, I bear witness to Thee that Thou art Allāh, there is no deity other than Thee; and that Thou art the Unique, the Eternal. Thou dost not beget, nor art Thou begotten; and there is no equal to Thee. To Thee is due all praise for Thy numerous favours bestowed on me, and Thy kindness to me. So pardon me and be kind to me, for Thou art the kindest of the Merciful ones." Then he continued to say: "There is no deity other than God. He is unique and there is no associate with Him; and Muḥammad is His slave and Messenger. A provision, this,[2] for this halting-place and for each one of the halting-places after it. O my God, give to Muḥammad from us the best of rewards, and convey to him the best of greetings. O my God, unite me with him (the Prophet) and do not loosen the bonds between us. Verily Thou art the Hearer of prayer, the Forgiving and Merciful One." Then [181 *b*] he cast his eyes on the People of his House and said, "May God protect you, O People of the House. And among you may God protect your Prophet. I leave you in the hands of God and I send you the greeting of peace." Then he continued to repeat: "There is no deity other than God: Muḥammad is the Messenger of God," until he died,—may the blessings of God be upon him, and His mercy and His approval—on the 21st night of the month of Ramaḍān, in the fortieth year of the Flight.'[3]

[1] So designated to distinguish him from Muḥammad b. al-Ḥanafīya.

[2] This refers to the formula of faith.

[3] 28 January 661.

(B) Concerning Lawful and Unlawful Wills[1]

§ 10. It is related to us from Ja'far b. Muḥammad, on whom be peace, from his father, from his ancestors, from 'Alī, the blessings of God be on him, that he ('Alī) came across a poor man. The man said to him: 'Shall I not make a will, O Prince of Believers?' He said: 'Admonish (thy heirs) to piety towards God. As for thy property, leave it to thy heirs; for verily it is something trivial and unimportant, and verily God has said,....*if he leave (any) goods*[2]; while you do not leave any goods which you can bequeath.' §§ 10–13

§ 11. And from the Prophet that he said: 'A man has the best right (to dispose of) his third; he may deal with it as he likes.' 'Alī told a man that he may bequeath a third of his property; and a third is a great deal.

§ 11*a*. Ja'far b. Muḥammad said that a woman had similar rights.

§ 12. And from 'Alī, that he said: 'I prefer that bequest should be decreased to the fifth;' and he said: 'God, mighty and great is He, is well-pleased with the fifth[3] from His own slaves.' And that '(bequest of) the fifth is the course of moderation; and of the third, a hardship on the heirs: and it is more pleasing to me that the fourth should be bequeathed rather than the third (of the property)'.

§ 13. And Ja'far b. Muḥammad said: 'He who [182 *a*] bequeaths the third has not left anything for his heirs, and has acted harmfully towards them. Bequest of the fourth or the fifth (part of the estate) is more excellent than that of the third.' And this is the preference concerning which we related (a saying) from him,[4] and bequest to the extent of the third is permissible. If the inheritance is considerable and the

[1] Throughout this section the word *waṣīya* is more often used in the purely legal sense of 'will', or 'bequest', than in the sense of 'moral and spiritual exhortation'. Hence I avoid 'testament' here.

[2] **2**, 176.

[3] Referring to **8**, 42.

[4] See § 12 above.

§§ 13–16 heirs rich, then there is no harm in dealing with the whole of the third. But if they are indigent, then to decrease it as has been related above,[1] is more excellent. And bequest to a greater extent than the third is not permissible, except when it is allowed by the heirs. And it is possible for them (all the heirs together) to permit this,[2] or for any one from amongst them to allow this (the excess) from his own share.[3]

§ 14. And it is related to us from Ja'far b. Muḥammad, that he said : ' If a man bequeaths more than the third, or the whole of his property, this is not permissible. And (the excess over the third) returns to that which is suitable, rather than to that which is not.[4] For surely in the case of one who has wronged himself in the matter of bequest and gone astray in it, the bequest will return to that which is proper and the heirs will receive their proper shares of the inheritance.'

§ 15. And from Muḥammad al-Bāqir and Ja'far as-Ṣādiq, may the blessings of God be upon them, that they said : ' When a man makes certain bequests, in which manumission is mentioned, then (the price of such) manumission should first be taken out of his third, and the residue (if any) should be allocated to the remaining bequests.' [5]

§ 16. Ja'far b. Muḥammad said : ' And similarly if a bequest is made so that from it a pilgrimage be paid for, the testator never having performed the pilgrimage himself, [in this case] this bequest shall be given preference to all the others.'

[1] Lit. ' then the decrease to that which is less than it (the third) as related above is preferable '.

[2] That is, bequest of more than the third.

[3] Even if *other* heirs do not allow the bequest, one particular heir has the right to forgo his share in order to validate the bequest or will.

[4] Or, returns and is divided in the approved or proper manner, and this illegal legacy is not approved and therefore not allowed.

[5] Preference is hereby given to bequests containing directions for emancipating slaves : other bequests are to rank *pari passu* only afterwards. Hence if the price of the manumitted slaves exhausts the third, then the other bequests would not take effect.

§ 17. And from Ja'far b. Muḥammad, the blessings of God be upon him, that a man amongst his companions told him: 'A woman among us disposed of her third by will and said, "Let there be given from it (the bequeathable third) a part (*juz'*) [182 *b*] to such and such a man, another to such and such a man, and another to such and such a woman." And verily Ibn Abī Lailā held this to be unlawful when the case was brought before him and said: "She only mentioned a thing which she did not specify."' Then Abū 'Abdi'l-lāh Ja'far b. Muḥammad said: 'Ibn Abī Lailā did not know the correct rule (of law). A *juz'* is one part out of ten.' By this he (Ja'far), may the blessings of God be upon him, meant that the *ajzā'*[1] consist of ten portions.[2] Now what is more[3] than it (the *juz'*), is said to be the half, or the third, or the fourth part and so on, until we come to the tenth part. And a fractional part less than the tenth (e.g. 1/11 or 1/12) is not known as the *juz'*.[4] §§ 17-18

§ 18. And (it is related) from him (Ja'far), on whom be peace, that concerning a man who bequeathed to another a *sahm* (undefined portion) from his third, he (Ja'far) said: 'Let a sixth part of it (the bequeathable third) be given to him because the word *sahm* is applied to one of six parts.'[5]

[1] Sing. *juz'*, strictly, an undefined part of a thing.

[2] In English we would say: 'Everything may be divided into ten portions.'

[3] Lit. 'on this side of it'. That is, where the denominator of the fraction is *less* than 10.

[4] This is the legal definition of *juz'*, and implies that when one speaks of a *juz'* in such a context, the meaning given to the word by law is the tenth part or portion of a thing or property.

[5] From §§ 17 and 18 it is clear that *juz'* and *sahm*, although originally general terms, have come to possess a definite technical meaning, i.e. the tenth and the sixth parts respectively of the property which is bequeathable. This is an important illustration of how lawyers in the past construed words when their connotation was left undecided by the testator himself, or where the exact fractional share was not indicated. As such these rules are counterparts of modern rules of interpretation which may be found in works like Maxwell on the *Interpretation of Statutes* or Norton on *Deeds*. In the one case it is the saying of the

§ 19 § 19.[1] And (it is related) from 'Alī [2] and Abū Ja'far [3] and Abū 'Abdi'l-lāh,[4] on whom be peace, that they said, 'There shall be no bequest to an heir'. And so far as our knowledge goes, there is consensus of opinion regarding this point. And if bequest were permissible to the heir, verily a greater portion than that which has been fixed by God would be bequeathable to him. And he who bequeaths to his heir, verily belittles the decision of God concerning him (the heir), and acts in contravention of His Book, may its mention be honoured; and he who acts contrary to the Book of Allāh, may its mention be honoured, acts unlawfully.

And a saying attributed to Ja'far b. Muḥammad has created a doubt in the minds of some of those who adopt his view. And it is this: when he was asked concerning a man who had made a bequest in favour of his relations, he answered that it was lawful because of the words of God, *If he leave any goods, the legacy is to his parents,* [183 *a*] *and to his kinsmen.*[5]

Imām, in the other the dictum of an illustrious judge, which is final. According to *M-B, sahm* may also mean one-eighth.

[1] §§ 19, 20, and 21 may also be found in *JBBRAS* for 1929, pp. 141–145. But I have carefully revised the translation and made numerous changes, as I found that the earlier rendering was in many respects defective.

[2] I first thought that this was Zainu'l-'Ābidīn, the *third* Imām. The Ismā'īlīs, as is well known, consider Ḥasan as the *first* Imām, Ḥusain as the *second*, 'Alī Zainu'l-'Ābidīn as the *third*, Muḥammad al-Bāqir as the *fourth*, and Ja'far aṣ-Ṣādiq as the *fifth*, and so on. 'Alī b. Abī Ṭālib, the first Imām of the Twelvers, is given a *higher* position as *Wasī*, who comes immediately after *Nabī* (prophet), and is therefore not generally designated as a mere *Imām*, but the *Mustadrak* adds the words *Amīru'l-Mu'minīn*, thus indicating that 'Alī I was meant here.

[3] Muḥammad al-Bāqir, the fifth Imām of the Twelvers and the *fourth* of the Ismā'īlīs.

[4] Ja'far aṣ-Ṣādiq, the sixth Imām according to the usual, and the *fifth* according to the Ismā'īlī computation.

[5] **2**, 176. See also Muhammad Ali's translation, **2**, 180 and particularly, footnote 223, where he discusses this point; and Baidāwī, ed. Fleischer, i. 100$_{18}$ *et seq.*

And that which we have related from him[1] and from his pure ancestors, is more authentic and there is consensus (of opinion) about it among the Muslims. §§ 19–21

§ 20. And from the Prophet, may God bless him and his progeny, that he said 'There shall be no bequest to an heir'. God has assigned to the persons entitled to inherit their specific shares. And if that opinion which has been handed down from Ja'far b. Muḥammad and mentioned by us latterly is authentic, then by 'parents and kinsmen' he (Ja'far) meant persons *other* than heirs, such as those relations who do not inherit; because he who is nearer in degree excludes them, like parents who are slaves or polytheists And we have mentioned above in an earlier portion that a slave can be purchased[2] from the inheritance of his master; then he is freed, and (as a free man) inherits the rest. And we shall discuss this matter fully hereinafter, if God pleases.[3]

And it is probable that the meaning of bequests to *parents and relations, in reason* (or *according to usage*)[4] is, as God has laid down in the *Qur'ān*, that is, that portion of the property to which they are entitled according to the laws of inheritance. And this is proper.[5] For instance, a man who, when faced with death, bequeaths his property to his heirs in accordance with the shares fixed for them by law; or hands over to them their specific shares, according to the command of God, lest they quarrel over it (the inheritance) after his death; or that some may deny to others what is due to them on account of their relationship.

§ 21. And it has been handed down from Ja'far b. Muḥammad that concerning a present (*'aṭīya*) to an heir and a

[1] In the earlier part of § 19.

[2] A slave cannot inherit, § 33; but he may first be purchased or freed according to the will of the deceased and may then inherit: §§ 15, 31, and 32.

[3] Cf. §§ 31, 32, and 33. [4] 2, 176.

[5] Or 'in reason', 'according to usage', 'reasonable', etc.

§§ 21–24 gift (*hiba*) made during the course of the disease from which the maker of the present or the donor of the gift dies, he (Ja'far) said that such dispositions were not lawful. And this confirms what we have said before.[1]

§ 22. [183 *b*] And from Ja'far b. Muḥammad that, when he was asked concerning a man who in his death-illness had admitted his indebtedness to one amongst his heirs, he (Ja'far) replied: 'It is necessary to look into the position of the person who admits. If he is a just man free from unfairness, his admission is lawful. If however he is not so, then his admission is not permissible, unless the heirs allow it.'

§ 23. And from 'Alī, the blessings of God on him, that he said: 'The Prophet decreed the debt before the legacy; while you read (in the *Qur'ān*): *After payment of the bequests* [*they bequeath*] *or of their debts.*'[2]

§ 24. And from Ḥakam b. 'Uyaina, who said: 'I was sitting at the door of Abū Ja'far (Muḥammad al-Bāqir) when a woman approached and said: "Ask permission of Abū Ja'far for me (to see him)." She was asked, "And what do you want from him?" She said, "I desire to ask him a question". She was told: "Here is Ḥakam, the lawyer of 'Irāq. Ask him." Then she said: "Verily my husband died and left a thousand *dirhams*. Now I had a claim against him for 500 *dirhams* for my dower. So I took my dower, and then I took my share of the inheritance. Afterwards a man came and said, 'He (the deceased) owes me 1,000 *dirhams*'; and as I knew of this I testified to it." Ḥakam said, "Wait until I think over your question and make the necessary calculation". He began calculating and while he was at it, Imām Muḥammad al-Bāqir

[1] The words *hiba* and *aṭīya* literally mean the same thing, viz. giving a thing without taking anything in return. But in law there seems to be a difference: *hiba* is used for substantial gifts of immovable property, while *aṭīya* is usually restricted to small presents.

[2] 4, 12. This passage cannot be understood unless the Qur'ānic verses above and below are also read.

came out (of the house) and said: "What is this, O Ḥakam, which is causing your fingers to move?" He (Ḥakam) informed him, and before he could finish what he had to say, the Imām said: "She should acknowledge his right as to two-thirds [184 *a*] of what is in her hands, and there is no inheritance to her until she pays him off."'[1] §§ 24–27

§ 25. And from 'Alī[2] and Muḥammad al-Bāqir, on whom both be the blessings of God: a man makes a bequest to a person who at the time (of bequest) is absent, and then the testator dies without altering his will. It is found later that the legatee had died *before* the testator. They (the Imāms) said: 'Such a legacy is void. Now if the legatee were absent when the bequest was made to him, and thereafter the legatee died *after* the testator, further inquiry is necessary. If the legatee had accepted the legacy, then it goes to his own heirs; whereas if he had not accepted it, it goes to the heirs of the testator.'[3]

§ 26. And from Muḥammad al-Bāqir and Ja'far aṣ-Ṣādiq that they told a man, that he could cancel his will, both in health and in disease; and he could alter it as he wished, for in this matter he was entitled to follow his own choice. And that (bequest) upon which the man dies,[4] is to be taken out of his (bequeathable) third.

§ 27. And from 'Alī[2] and Muḥammad al-Bāqir and Ja'far aṣ-Ṣādiq, on all of whom be the blessings of God, that they said: 'When a man bequeaths a legacy, the legacy is to be paid out of his third, and this although the bequest is made

[1] The one thousand *dirhams* are to be divided into three parts, 2 to be given to the creditor and 1 to the wife, in discharge of her dower-debt. This division is in proportion to their respective claims, viz. 1,000 and 500 dirhams. Thereafter the widow may pay off the debts of the husband out of her other property; but in any case there is no inheritance to her so long as this claim remains unsatisfied.

[2] Seems to be 'Alī II (*Zainu'l-'Ābidīn*), but it is impossible to be certain.

[3] The pronouns here are very deceptive and I have used substantives throughout.

[4] That is, there being no revocation or alteration.

§§ 27–29 in favour of a Jew or a Christian, and whatever the object of the bequest. Now verily this must be done on account of the word of God, *But he who alters it (the legacy) after that he has heard it,—the sin thereof is only upon those who alter it.*'[1] They (the three Imāms) mean hereby, that this command applies when the testator acts in the matter of the bequest according to what is permissible for the living Muslim to do. And if the testator bequeaths in a manner other than what is permissible, then this is not lawful.

§ 28. And from Ja'far aṣ-Ṣādiq, on whom be peace, that he was asked concerning a man who made a bequest for a pilgrimage,[2] and his executor utilized the bequest for (emancipating) a slave. He said [184 *b*]: 'The executor should be compelled to pay to the extent to which he has acted contrary to the testator's wish, and the legacy is to be spent according to the testator's will.'

§ 29. And from him (Ja'far as-Ṣādiq), on whom be peace, that he said: 'Fāṭima, the daughter of Asad son of Hāshim, the mother of 'Alī b. Abī Ṭālib, made a dying injunction to the Prophet and said, "O Prophet, set free my female slave, so and so". The Prophet said: "Verily you will recover (in the next world) what you have given away of your property."[3] When she died the Prophet stopped at her grave before she was laid in it, and said (to those around): "Wait." Then he, the blessings of God be on him, descended and reclined in her grave, and came out and said: "Lower her. I did what I did desiring only that God may increase (His mercy) on her.[4] For

[1] 2, 177.

[2] Defraying the expenses of a pilgrim who goes on his behalf.

[3] God will requite you for your gifts of charity.

[4] The Prophet reclined in the grave seemingly for the purpose of saving the lady from the rigours of the عذاب القبر, the travail of the grave, which every individual has to suffer before he faces God. It would appear that the angel, whose duty it is to castigate the soul of the dead person, would be moved to pity her because the Prophet had also lain in the same grave.

verily no one profited me as much as she and Abū Ṭālib did." And the Prophet undertook the execution of her will, and gave effect to it in accordance with her desire.' §§ 29–32

§ 30. And from Ja'far aṣ-Ṣādiq that he said: 'When a man bequeaths a legacy to another, the legatee has the option either of accepting or rejecting the legacy, if he (the legatee) is present. Now if he refuses it in the presence of the testator, the legacy can never belong to him. But if a bequest is made to him while he was absent and thereafter the testator dies, in this case it is not necessary to decline the legacy (expressly). For when the testator died, the legacy became a right amongst the rights of God,[1] the Glorious and Exalted.'

§ 31. And from him (Ja'far), on whom be peace, that he said: 'If a man bequeaths one-third of his property to his slave, then let the slave be valued. If the third part thus bequeathed is less in value than the price of the slave, but not less than one-fourth of the said price, the slave shall be emancipated to the extent of the legacy, and he is free to emancipate himself fully by paying off the difference.[2] And if the third is in excess of the price [185 *a*] of the slave, the slave is emancipated and the excess shall be given to him. And if he is not emancipated except to the extent of less than the sixth part (the legacy being less in value than one-sixth of the slave's price), there shall be no legacy to him.'[3]

§ 32. And from 'Alī, on whom be peace, that he was asked about the bequests made by, and the legacies given to,

[1] And is therefore to be distributed with reference to the rules of *Farā'iḍ* (Inheritance and Succession).

[2] For example, the price of the slave is 400 *dīnārs*. The bequeathable third is 100 *dīnārs* (the testator dying possessed of property worth 300 *dīnārs*), *but not less*. In this case the slave is emancipated to the proportionate extent. He may for instance be free each day for a quarter of the day, and so forth.

[3] If, for example, the slave's price is 700 *dīnārs*, and the legacy is no more than 100 *dīnārs*, this, being less than one-sixth of the price, is no legacy at all and no proportionate emancipation takes place.

§§ 32–35 slaves who are to be emancipated by instalments.[1] He said: 'The legacy is valid to the extent which is necessary for manumitting him.' This is a brief statement (of the law), and we have fully explained it in the chapter on 'Freed Slaves' (*mukātabūn*). And the meaning is that this applies to him who has not contracted that if he fails (in any condition or as to any instalment), he returns to the condition of slavery. But as for him who makes this condition, his position is the same as that of a slave in this respect, until he pays off the last instalment of his debt. And we have mentioned the point about legacies to slaves in the preceding section.[2]

§ 33. And from 'Alī and Muḥammad al-Bāqir and Ja'far aṣ-Ṣādiq, on whom be the blessings of God, that they said: 'There shall be no bequest to the slave.'[3]

§ 34. And from Ja'far aṣ-Ṣādiq, that he said: 'When a man bequeaths,—that is, bequeaths in excess of the third—and the heirs allow him to do so in his lifetime, and then after his death, they realize the true state of affairs, they have no right to repudiate (the legacies).'[4]

§ 35. And from him (Ja'far) that he said: 'Umāma—the daughter of Abū'l-'Āṣ, son of Rabī' and of Zainab, daughter of the Prophet, whom 'Alī married after Fāṭima, and whom

[1] For *mukātab*, see *M–B*, 141_{31}.

[2] Cf. § 31. Two possibilities are here contemplated: (i) that a slave may pay a portion of his price and be emancipated to that extent at least, even if he pays no more. For instance, he may free himself for one day in the week by paying off one-seventh of his price. Or (ii) the condition may be that there is to be no proportionate emancipation at all. For instance, that until the last instalment is paid, the slave is not free to any extent whatsoever, or that if he defaults in paying an instalment, he returns to his former condition of absolute slavery.

[3] This is a curious *riwāya* and seems to be inconsistent with § 31. The gloss in *C* which adds the proviso 'save in the manner aforesaid' is therefore very significant.

[4] On this point the Ismā'īlīs agree with the Twelvers and differ from the Ḥanafīs, among whom such consent can only be given *after*, and not *before*, the death of the testator.

al-Mughīra b. Naufal married after 'Alī—became ill and lost her power of speech. Ḥasan and Ḥusain then came to her, and despite Mughīra's [185 *b*] aversion, began speaking to her, " You have emancipated so and so ", and she nodded, signifying her assent. And they said : " You have given in charity for such and such a cause ", and she nodded assent ; and thus she died. And they (Ḥasan and Ḥusain) held her bequests to be lawful.' [1] §§ 35–39

§ 36. And Ja'far aṣ-Ṣādiq said : ' A sign, when it is understood as signifying a bequest, is permissible in the case of one who is unable to speak.'

§ 37. And from him (Ja'far), that concerning a man who made a bequest of a hundred *dīnārs* from which a slave-girl was to be manumitted, and she was found to be of less value, he said : ' The excess is to be returned to the slave-girl, if the testator has specifically mentioned her by name. But if he has used general words in respect of her,[2] then it is the duty of the executor to buy (and emancipate) a slave-girl worth a hundred *dīnārs*, if he finds one in accord with the terms of the bequest.'

§ 38. And from him (Ja'far) that if a man who is indebted were to bequeath to another, and the executor were to take away the debt from the bulk of the testator's property, and take possession of it by sending it to his own house, and (thereafter) divide the residue among the heirs and give effect to the legacies : and afterwards if the property were to be stolen from the testator's house, Ja'far said : ' The executor will be held liable for the property, because he had no right to take possession of the property of creditors without their authority.'

§ 39. And from him (Ja'far) that he was asked concerning a suicide. He said : ' If the bequest (or will) is made after

[1] Cf. *Indian Evidence Act*, Section 119.

[2] If it is generally stated that a slave-girl worth 100 *dīnārs* is to be freed.

§§ 39–44 he caused the new state of affairs[1] to happen to himself and which killed him, then his will (or bequest) is not permissible.'

§ 40. And from him (Ja'far) that he said: 'A man bequeaths legacies and then dies. Previous to this he had already remitted maintenance (moneys) for a certain period to his family.[2] Whatever remains over, after (deducting the maintenance moneys) till the day of his death, is inheritance; and legacies will be paid [186 *a*] out of it.'

§ 41. And from 'Alī, on whom be peace, who said: 'Nothing can deprive the executor of his executorship except loss of reason or apostasy or prodigality or dishonesty or abandoning the *sunna*.[3] And the Sultan is the executor of him who has no executor, and the guardian of him who has no guardian.'

§ 42. And from Muḥammad al-Bāqir that he said: 'If the testator permits the executor to carry on trade with the money belonging to his infant children, then he is entitled to do so, and there is no responsibility on him in case of loss. And if the testator has permitted the executor to take the profits, then the condition is valid and binding.'

§ 43. And from Ja'far aṣ-Ṣādiq that he said: 'When an executor carries on trade with the money of an orphan, and this right was not given to him by the will, then he stands surety for the loss that ensures, while the profit goes to the orphan.'

§ 44. And from Ja'far that he said: 'A person makes a will and leaves heirs who are absent, and the executor takes the matter to the *qāḍī*. Verily the *qāḍī* shall appoint an agent, who, jointly with the executor, shall take charge of the shares of the absent ones on division' [186 a_{12}].

[1] That is, after he had begun the commission of the act which ultimately caused his death.

[2] This is a case of a person staying away from his family.

[3] *Sunna* here is not to be taken in its usual sense: it seems here to be synonymous with *sharī'a*, religion generally. A man who disregards the prophetic practice is hereby debarred from executorship.

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